"THE NATURAL RESOURCES CONVENTION"

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Winnipeg,
April [illegible], 1960.

The Hon. [illegible] Johnson,
Attorney General of Manitoba.

Dear Sir,

I have to submit herewith the outline of the Historical Sites of Provincial Status in the Natural Resources of Manitoba, prepared under your instructions of January, 1959.

It is almost unnecessary, perhaps, to add in view of publication that the views here presented as the result of historical investigation are my own and must be regarded in no way as attaching to the official views of responsible ministers under the Crown. Permit me, however, to express my thanks for your satisfying confidence and for the very great kindness of the Provincial Education and staff in facilitating my work in every way.

Yours very

respectfully yours,

CHESTER MARTIN.

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principle as applied to the period of her status as a Canadian province since 1870, and it may be stated briefly as a claim for the unrestricted control of the natural resources within her boundaries, subject only, or to the simple recognition of her full-fledged interest as a Canadian province not only in those but in those already alienated by the Government of Canada for the purposes of the Dominion since Manitoba acquired self-governing provincial status in the Canadian Confederation.

In a very real sense, therefore, the issue is now as fundamental for this province as was the control of the Crown lands during the long controversy for 'responsible government' in Upper Canada. In fact, it is largely the same issue: whether Manitoba is a 'colony' or a province of the Dominion. In this the province is claiming no new principles. The issues which it raises are as old as 'responsible government'. It will be seen that by virtue of the principles then vindicated, all the original provinces of the Dominion acquired the full-fledged control of their public domain long before Confederation. These principles were recognized and perpetuated in Confederation by section 109 of the British North America Act of 1867, by which the beneficial control of the public domain was vested in the several provinces. The same principles, elsewhere applied, resulted in the beneficial control of public land by New Zealand, by Newfoundland and by the provinces of the Australian Commonwealth. In fact, so fundamental and so widely recognized are these principles, largely through the Canadian precedent and 'responsible government', that in all the self-governing provinces and Dominions of the British Empire the Prairie Provinces of Canada constitute the only exception to their application. Even in the case of other provinces subsequently entering the Canadian Confederation, Manitoba remained for thirty-five years the solitary exception to the rule. In the case of British Columbia, the principles were applied so naturally and so normally that the issue was not even raised for discussion; while in the case of Prince Edward Island, the Dominion assumed obligations for which

it was in no wise responsible in order to endow the province with an equivalent for the public domain alienated by royal grants of the preceding century. For half a century now the Province of Manitoba has been contending for equitable 'rights' the denial of which was so exceptional as to be an anachronism even in 1870.

The present inquiry, therefore, may be simplified by confining very briefly at the outset the range of the historical evidence to be examined in the sections to follow:

(II.) As already indicated, the constitutional principles now invoked by Manitoba were established in the conflict for 'responsible government', and the historical background of that conflict is to be found not in Manitoba but in the Province of Canada three generations ago. It was in Canada, in fact, that those principles were first vindicated which have since become the common heritage of all British self-governing communities. With regard to the public domain at least, it is in the case nearest home, that of the Prairie Provinces of Canada, that those principles have yet to be applied. As early as 1840 and 1847, as Keith points out, 'the Canadian Parliament received complete control of the lands which were situated in those provinces, and the plan adopted in every case of the grant of responsible government to the Maritime Provinces took the form of a grant of full rights over the lands in exchange for a civil list. Canada has not adopted the British idea in dealing with the land in the new provinces.'[1] In the section (Chapter II) entitled British Principles with Regard to the Public Domain, an outline of these 'full rights over the lands' will be attempted in as brief a space as may be left to be consistent with the fundamental importance of the principles involved.

(III.) The conditions under which the Hudson's Bay Company rights in Rupert's Land were surrendered to the Crown by the Hudson's Bay Company, and 'Rupert's Land' (together with the 'North Western Territory') united to

[1] Keith, Responsible Government in the Dominions, vol. II, pp. 1017, 1018.

Canada by the Crown in 1870, were of a very exceptional nature. The constitutional procedure scrupulously observed in the process of transfer, however, left unimpaired the implications of that procedure for the new district 'as a part of the British Colonial System'.[a] There were exceptional conditions among others the payment of £300,000 attached to the preliminary surrender of chartered rights in Rupert's Land to the Crown, and it is safe to say that from these conditions many implications have been sought which are quite unwarranted by the facts. Similarly, the element of so called 'purchase' has served to conceal in the British constitutional procedure other implications which beyond reasonable doubt are warranted by the facts. In discussing (Chapter III) The Surrender of Chartered Rights in Rupert's Land and the Transfer to Canada in 1870, therefore, it will be necessary to examine this element of 'purchase' and the procedure observed in the surrender from the Hudson's Bay Company to the Crown and the transfer from the Crown to Canada.

(IV.) The circumstances under which Manitoba came into Confederation as a province were also very remarkable in that there was no previous period of territorial status. The same Imperial Order in Council which effected the transfer (in pursuance of the B.N.A. Act of 1867, section 146 and the Rupert's Land Act, 1868, section 8) effected also provincial status for Manitoba by bringing into operation the Manitoba Act of 1870. The conditions under which this Act was drawn up, however, were so exceptional that British principles were completely abrogated in connection with the public domain. The terms imposed upon the province by the Dominion provided for the administration of 'all unalienated or waste lands in the Province . . . by the Government of Canada for the purposes of the Dominion'. The circumstances which were held to warrant this contravention

[a] Colonial Office to Governor-General, Nov. 30, 1869, quoted from Order in Council of the Province of Canada, June 22, 1869. Correspondence connected with Recent Occurrences in the North-West Territories, Ottawa, 1870, p. 188.

tion of British practice will be discussed in the Chapter upon The 'Transfer' and Provincial Status for Manitoba.

(V.) Within three years after the transfer of Rupert's Land from the Crown and the creation of the Province of Manitoba, two other provinces entered the Canadian Confederation. British Columbia in 1871 had passed through a development since 1849 which afforded in some respects perhaps the closest parallel to that of Rupert's Land. In both cases the surrender from the Hudson's Bay Company to the Crown had been accompanied by a monetary consideration, but whereas British Columbia came into Confederation with full beneficial control over her public domain, that over Manitoba was retained by Canada 'for the purposes of the Dominion.' The procedure followed in 1871 will be traced (Chapter V) in the outline of British Principles and Canadian Practice in British Columbia.

(VI.) The entrance of Prince Edward Island into Confederation in 1873 invites a similar discussion (Chapter VI) of British Principles and Canadian Practice in Prince Edward Island. In some respects the case of that province will be found to afford even a closer parallel and also a sharper contrast with Manitoba than that of British Columbia. The circumstances were exceptional, and the exceptional measures which were thus found to be necessary illustrate very clearly the principles involved. The belated subsidy 'in lieu of lands' to Manitoba in 1882 was granted 'as is done in Prince Edward Island.'

(VII.) The policy pursued by the Federal Government with regard to the public domain in Manitoba after 1870 affords a humiliating contrast to the British practices which obtained elsewhere in Canada and the Empire. This will be found to apply particularly to the Dominion's attitude of 'ownership' towards Manitoba as the 'property' of Canada, 'purchased,' 'possessed,' and 'administered . . . for the purposes of the Dominion.' This attitude is reflected even in the statutory basis for the federal administration of the public domain as devised in the Manitoba Act (afterwards

found to have been largely alienated and endorsed by the B.N.A. Act of 1871 (the all-purpose statute). The immigration and railway policy of the Canadian Government the province with intolerable obligations for land grants and deprived the provincial treasury of the same type of territorial revenues from which such expenditures have customarily been met. These conditions, culminating in the humiliating 'Treaty Money' with regard to the surrender 'patently to free of lands' in 1884, will be outlined in discussing Chapter VIII Federal Policy and Provincial Claims in Manitoba after 1870.

(VIII c) The indication of the 'Minority to free of lands' in 1884, together with the uncompromising attitude of the Dominion Government with regard to the whole issue of 'provincial rights' over the public domain, will require special consideration in view of the actual, by the Dominion Government, of Keewatin in preference to British principles and precedents. It will be found that Keewatin precedents were not only practically accepted but were promulgated in the province for thirty years in the attempt to justify the appropriation of public lands in Manitoba. For the purposes of the Dominion's disregard of this phase of federal policy will be found in the section (Chapter VIII) upon American Precedents for a British Province.

(IX) The origin in general British constitutional principles and an outline of the general application of these to the 'Natural Resources Question' as it now stands will be attempted in the closing section entitled 'British Precedents in the Ancendant Province of Canada'.

This introductory outline is summarized below, and at the close of each section will be found a brief summary of the conclusions which seem warranted by the evidence. A recapitulation of these conclusions under the various respective headings is appended to this memorandum.

SUMMARY

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of the crown lands was vested in the Governor and Council, and formed regularly the subject of formal instructions both in the commissions of the successive governors and in detailed instructions drawn up for specific purposes from time to time. During the period, and indeed long afterwards, the ungranted and waste lands were regarded as being vested in the Crown, as being granted by the Crown through duly accredited representatives[1] with "full Power and Authority to grant the same upon such terms ... and under such other Conditions as shall appear to us to be necessary and expedient"[2], and as lasting [illegible] in these grants were a revenue pertaining, the income, in part, of the casual and territorial revenue of the Crown.

1791-1840 Throughout the succeeding period, from the Constitutional Act of 1791 to the Act of Union, 1840, similar forms of administration and control of crown lands remained theoretically in force, though these became the object of bitter and almost incessant attack during the conflict for responsible government. The Constitutional Act itself specifically safeguarded the King's prerogative touching the granting of waste lands of the Crown within the said Provinces. In the thirty-sixth and following sections of the same Act were made the well known provisions for "clergy reserves" which formed the whole question of responsible government in one of its most acute and continuing forms.[3]

The power, nominally vested in the Governor acting with the advice of his Executive Council, devolved in effect, however, entirely upon his Council which was composed of residents of the province entirely without responsibility to the Assembly. Having interests of their own to promote, in

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[1] Royal Proclamation, October 7, 1763. Cf. Commission of Governor Murray, November 28, 1763; Instructions to Governor Murray, December 7, 1763, [illegible] Const. Docs., I, p. 181, p. 191; Instructions to Lord [illegible], [illegible], [illegible].

[2] Const. Docs., I, p. 181, p. 42.

[3] "It shall and may be lawful for His Majesty ... to authorize the Governor ... to make from and out of the lands of the Crown ... allotment and appropriation of lands for the support and maintenance of a Protestant Clergy." Const. Docs., I, p. 1031, sec. 36, et seq.

people among they deemed to people, or it may be equally among they were willing to improve, the members of the Council should unhesitatingly exercised their powers for purely colonial purposes and for local or personal objects.[1] The application of 'people' and 'association' by which the Commissioner agreed to limited, or a 'leader' or promoter the grants of land which were made on the questionable area allowed by the land regulations personally to themselves, was carried to a system in Lower Canada until under the administration, that of Sir Robert Shaw Milnes, six members of the Executive Council who constituted the Land Board granted about 1,430,000 acres to fewer than 80 individuals. The Lower Canadian Assembly submitted that the management of the waste lands of the crown has been careless and improvident; and even the Select Committee of the British House of Commons on the State of the Civil Government of Canada in 1828 deprecated the practice of making grants of land in large quantities to individuals who had held official situations in the Colony.[2]

The manner in which the administration of the crown lands and the territorial interest therein, however, were still jealously retained in the name of the Crown. As late as 1841, the Canadian Revenue Control Act (4 & 5 Will IV, c. 98) in granting the Assembly of the province the control of the taxes under the Quebec Revenue Act of 1774 (14 Geo III, c. 88) specifically reserved the casual and territorial revenues of the Crown.[3] The Governor, Lord Sydenham, contended in that year (1841) that these revenues stand upon a perfectly different ground from taxes, properly so called. They are enjoyed by the Crown, by virtue of the Royal Prerogative, and are neither more nor less than the proceeds of landed property, which legally and constitutionally belongs to the Sovereign on the throne.[4] Until the Act of Union, in fact, the crown lands, as Charles Buller expressed it in his special

[1] Report on Public Lands and Emigration, by Charles Buller to Lord Sydenham, 1841, Lord Durham's Report, pt. 3, app. iii, p. 28.
[2] Keith's Documents of the Canadian Constitution, pp. 1018, 1019.
[3] Stevens, Lord Durham's Report, at Lower, p. 180.

[illegible] report to Lord Durham in 1838, were to retain the property of the Crown, and under the control of an English minister, while the Assembly claimed that the administration of the Crown lands ought to be entrusted to ministers responsible to the Assembly, and that revenue arising therefrom ought to be under the control of the representatives of the people.[a]

These claims were definitely conceded by the Act of Union, 1840, and by the principle of responsible government subsequently acted upon by British governors. In view of the importance of the principles involved, it may be advisable to trace briefly this final stage of the long controversy until it was definitely closed by Imperial enactment, conceding specifically to self-governing provinces, for the benefit of the local interest in the public domain, and for the administration thereof, as indispensable adjuncts of responsible government.[b]

(a) *Beneficial Interest.* By the Act of Union, 1840, it is provided that "all the territorial and other revenues now at the disposal of the Crown within the Province of Canada" should be surrendered to the consolidated revenue fund of the province in return for a fixed "civil list" of £75,000.[c] That is to say, it took place on the footing of a bargain or compact, the grant of territorial revenues in return for assuming the obligations "civil list" of self-government. A similar controversy had been going on, however, in Great Britain itself with regard to the surrender of what were called "the hereditary and territorial revenues of the Crown" to the Imperial Parliament. This has been effected by "civil list Acts" passed at the beginning of each reign for the life time of the sovereign. Since, however, those "hereditary and territorial revenues of the Crown" were surrendered to the Imperial Parliament by the "civil list Acts" included there

[a] Lord Durham's Report, ed. Lucas, iii. 87 ff.

[b] Mackenzie's Resolutions, Lower Canadian Assembly, February 21, 1837.

[c] 3 & 4 Vict., ch. 35, s. 51.

[d] 1 Will. IV, c. 20; 6 & 7 Vict., c. 2, s. 2.

[e] Similar Acts have been passed at the beginning of the reigns of Edward VII and George V (1 Edw. VII, c. 1 and 10 Edw. VII & 1 George V, c. [illegible]).

ultimately the territorial revenues from the crown lands of the whole Empire, it was deemed advisable definitely to terminate by Imperial Act all local interest in these lands. This was effected in 1869 by the 32 & 33 Vict. c. 62, which specifically excepted from the casual and territorial revenues of the Crown, according to the consolidated fund of Great Britain through the Civil List Act, all sums arising from the sale or other disposition of the lands of the Crown in any of Her Majesty's colonies or foreign possessions. The Act 33 & 34 Vict. c. 60, therefore, marks the formal conversion of the demesnes of self-governing provinces to full local interest in the public domain within their boundaries.

The Administration. The process of putting the principles of responsible government into practical operation was necessarily slow and tentative. It was not until the time of Lord Elgin that it became a settled policy on the part of the Governor-in-Council the whole weight of responsibility on those who exercise the real power. The administration of government, including the whole control of local revenue, etc., thus devolved upon ministers directly responsible to an elective assembly, and the full jurisdictional control of the public domain thus formed a positive, natural and indeed inevitable development.

Here again we see Gladstone, however, the principle is established and merely by practice in not governing provinces but by the express provisions of Imperial statute. Even in the Act of Union, 1840, Her Majesty's proposal for transferring the granting of waste lands of the Crown had been subjected by providing that Canadian bills relating thereto should be laid before both Houses of Parliament of the United Kingdom of Great Britain and Ireland, before giving the royal assent to. By the Union Act Amendment Act of 1841 these provisions were repealed and the royal assent could thus be given at once by the Governor-in-Council bills relating to the public domain. This act only thus be

adopted bills to the Judge of Quebec, March 30, 1866.
and 4 & 5 Vic., c. 69, s. 43.
and 3 & 4 Vic., c. 35, s. 9.

and to have conducted the negotiations in the interest of legislators of Canadian provinces long before Confederation. The sole control of the actual administration of the crown lands.

The double principle, therefore, of administration of crown lands by parliamentary legislation and the management of the full federal interest through the local parliament came to take the form with which all the provinces of Canada, with the exception of the Prairie Provinces, have since been familiar. The Colonial Office, it will be seen, conceded the latter part of the principle with particular emphasis in negotiating with the Hudson's Bay Company with regards to Rupert's Land. It is clear that pressure of the Canadian case made upon the local revenue as legitimately belonging to the Canadian [illegible]. The federal control of the public domain has thus actual to a very well precedent which the principles of 'responsible government' are applied and passed to their logical conclusions. It operated naturally and normally in the Australasian, New Zealand, and the provinces of the Australian Commonwealth. In each case it took the form of a compact, the grant of the federal control of the public domain to which the enabling the states and adjustment of self government. Both in Canada and the Maritime Provinces the plan adopted in every case of the grant of 'responsible government,' as Pitt's phrase said, took the form of a grant of full rights over the lands in exchange for a civil list.

The phase of the question, indeed, is worthy of special consideration because it affords almost an exact parallel to the policy of the federal government in the administration of the public domain of Manitoba since 1870. Lord Durham, though the agents of responsible government in many other respects, was prepared to accept at that stage of the development of our institutions (1839) the phase of Colonial Waterfield

[illegible] relating to the surrender of Rupert's Land, 1869, Kingsville 1870 to 1874

[illegible] the Government to the Dominion in 1871.

and Charles Hatter the Imperial administration and control of crown lands. It therefore appears that the entire administration of it should be entrusted to an imperial authority.

Charles Hatter, whose special report on Public Lands and Emigration formed the basis of Lieutenant-Governor Arthur's proposal that all revenue arising from the sale and leasing system of colonization should be specifically appropriated to such funds as would enlarge the sphere of land and facilitate the payment of assistance to poor and land captain himself in recommending that all the revenue of the Crown should at once be given up to the United Kingdom in the commission of an adequate civil list appropriately designed there and there only should all be derived from the public lands.

It is significant that though Lieutenant-Governor Arthur's scheme with regard to public lands in that particular period of colonial development has commanded much admiration, the principal aims have and the historical remains of the colony as already noted, were rejected by Lord Stanley to the Legislative Assembly. He based his objections upon the principal legislation with the power of responsible government in imperial control over the public lands and in the nature of things impossible. Charles Hatter had stated the alternative to imperial control in terms which were natural to be desired.

> If and when it shall be considered that in the case of such a colony and large charge expended, the whole revenue of the property should be applied to the local purposes and appropriated annually to the Colonial Treasury. This is required by every principle of justice.[2]

Lieutenant-Governor Arthur's proposal with regard to perhaps the most intimate and intensely local subject of colonial concern was defeated, nominated in Hansard as dead letter. The attitude of imperial control by local legislature was

[illegible] Hansard, 3rd Series, [illegible]
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[illegible] Hansard, 3rd Series, [illegible]

responsible for setting to rich of the original provinces of Confederation the rights over the public domain which they have enjoyed ever since, and the constitutional rights which they seek to deny to the Prairie Provinces in the twentieth century are thus the same rights which they themselves vindicated even against the hostile of responsible government in other hands, Lord Durham himself during the first half of the nineteenth. The irresponsible conferred against the patrimonial rights of the Prairie Provinces 'would have justified' (to quote the words of one of the most eminent of Canadian constitutionalists on a very unfavorable occasion) the reversion by the Imperial government up to the present time of every piece of Crown Lands in Canada.[1]

As already indicated, these recognized provincial rights were entrenched in section 109 of the B.N.A. Act of 1867, and so well established were these principles that when British Columbia entered Confederation they were applied to that province automatically without even the formalities of preliminary discussion.[2] In Prince Edward Island heavy obligations were gratuitously assumed by the Dominion in order to establish the Colony in a position as regards land tenure and territorial revenues, similar to that occupied by the adjoining Provinces.[3] For thirty-five years Manitoba remained the solitary exception to the general rule. The Prairie Provinces of Canada alone among the self-governing provinces and Dominions of the British Empire are still living in respect of our natural resources under 'colonial' conditions, in some respects more reactionary than those which prevailed a hundred years ago in the provinces of British North America. In 1840 the crown lands, as Butler pointed out, were at least administered by residents of the province 'for

[1] 'In 1840 the [illegible] property of Lord Durham. 'It was [illegible] organized [illegible] the people living in and developing any dependency were [illegible], and might safely be entrusted, the entire control of the public lands [illegible]' In Robert Borden, Hansard, 1906, p. 1464.

[2] See Chapter 4.

[3] See Chapter 7.

purely colonial purposes' and 'for local or personal objects' by statute which the Dominion imposed upon this Province against her will (as expressed on at least four occasions) in respect of public lands, the natural resources of Manitoba are 'administered by the Government of Canada for the purposes of the Dominion.'[a]

Canada, therefore (as Keith points out), 'has not adopted the British ideas in dealing with the land in the new provinces,' and the Dominion 'manages to control lands despite the existence of the provinces . . . in a way which would never have been possible to an Imperial power which had no direct share in the ordinary government of the country.'[b] Despite our representation in a federal capacity at Ottawa, half a century has passed since British 'rights' to the 'full control of all the public land' were claimed for the 'Local Legislature.'[c] Manitoba has exercised self government with a 'civil list' for fifty years[d] without receiving, according to British practice, 'full rights over the lands in exchange.' The beneficial control of the public domain is implicit in full provincial status under responsible government, yet the fundamental British principles upon which the historic status of Manitoba as a Canadian province since 1870 are based, have yet to be applied in even concealed to this province in anything like their logical entirety.

SUMMARY.

1. The claim to (a) the administration of the public domain, (b) the beneficial interest thereto, formed an integral part of the conflict for 'responsible government' in Canada.

2. Both these functions were definitely conceded more than seventy-five years ago to provinces under 'responsible government,' Imperial beneficial control being definitely renounced by statute (15 & 16 Vic., c. 39 and 17 & 18 Vic., c. 118).

a. Lord Durham's Report, ed. Lucas, III, 57-58.

b. See Chapter IV.

c. Manitoba Act, 33 Vic., c. 3, s. 30.

d. Responsible Government in the Dominions, II, 1061, 1063.

Both functions, therefore, were implicit in provincial status for all the original provinces of Canada.

3. When these provinces united to form Confederation these rights were confirmed in *B. N. A. Act*, 1867, s. 109.

4. Similarly in Newfoundland, New Zealand, the provinces of the Australian Commonwealth, the same principles are uniformly in operation. 'Colonists of the Anglo-Saxon race look upon the land revenue as legitimately belonging to the community.' (*Colonial Office*, 1864, *re* Rupert's Land).

5. 'The plan adopted in every case of the grant of responsible government . . . . took the form of a grant of full rights over the lands in exchange for a civil list' (*Keith*), viz. a contract involving the grant of the beneficial control of the public domain in return for undertaking the obligations of self-government. Manitoba has discharged the duties of 'responsible government' with full 'civil list' since 1870 and has been defied for fifty years 'full rights over the lands in exchange.'

6. Even Lord Durham's proposals with regard to Imperial control of crown lands for purposes of scientifically directed colonization were still-born in Canada, and the only alternative was that 'the whole control of the property should be vested in the most ample and unconditional manner in the Colonial Legislature. This is required by every principle of justice.' (*Buller*).

7. The constitutional rights which the original provinces of Confederation now seek to deny to the Prairie Provinces in the twentieth century are the same rights which they themselves vindicated, even against Lord Durham, during the first half of the nineteenth. 'The arguments employed against the provincial rights of the Prairie Provinces would have justified the retention by the Imperial government up to the present time of every acre of Crown Lands in Canada.' (*Sir Robert Borden* in 1905).

8. In respect of public lands, Manitoba is still a 'colony' of the Dominion, with this difference for the worse, that whereas the crown lands before 'responsible government' were administered by residents of the province 'for purely colonial purposes' and 'for local or personal objects' (*Buller*) those of Manitoba are administered, by Dominion statute, 'by the Government of Canada for the purposes of the Dominion.'

III.

THE SURRENDER OF CHARTERED RIGHTS IN RUPERT'S LAND

AND THE

'TRANSFER' TO CANADA, 1870.

The reluctance of the other provinces of Canada to concede to the Prairie Provinces the status which they themselves have always enjoyed has been defended and in some quarters seems to be defended still upon the contention that 'Rupert's Land' and the 'North-Western Territory' were 'purchased' from the Hudson's Bay Company and thus became the 'property' of Canada, to be administered 'for the purposes of the Dominion.' The evidence in the case indicates that this view is not warranted by the facts, and that the contention based upon that view has no parallel in British constitutional practice. The negotiations preceding the transfer form a very intricate and complicated process, but the transfer itself would seem to have been effected with scrupulous regard for sound constitutional procedure. The principles involved may perhaps be outlined for all practical purposes by examining (a) the nature of the so-called 'purchase,' (b) the actual procedure, and implications of that procedure, involved in the surrender of the Hudson's Bay Charter rights over 'Rupert's Land' to the Crown and the transfer of both 'Rupert's Land' and the 'North-Western Territory' by the Crown to Canada.

(A)—The Nature of the 'Purchase.'

The extension westward of the Province of Canada, and after 1867 of the Confederated Dominion, had long been generally accepted in Great Britain and in Canada, and even at the Red River Settlement, as an inevitable development. In 1857 the Select Committee of the British House of Commons in their famous *Report* recommended that 'the

districts on the Red River and the Saskatchewan should be added to Canada by arrangements as between Her Majesty's Government and the Hudson's Bay Company. In the British North America Act, 1867, section 146, provision is made:

> "The Address from the Houses of Parliament of Canada to add Rupert's Land and the North Western Territory, or either of them, unto the Union, shall thereupon be made, and the Queen shall be, if she thinks fit, to address, subject to the provisions of this Act."

Pursuant to this section of the B.N.A. Act of 1867 a joint address of the Canadian Senate and House of Commons was passed December 16 and 17, 1867, praying to be allowed to assume the duties and obligations of government as regards those territories and urging the formation therein of political institutions bearing analogy, so far as the circumstances will admit, to those which exist in the several provinces of the Dominion.

As early as 1867, however, the Hudson's Bay Company expressed a willingness to have the Red River district formed into a Crown Colony. In the preceding year the control of the Company had been purchased by the International Financial Company, and caused the negotiations in connection with the introduction of the direct authority of Her Majesty's Government into Rupert's Land, with the retention of an extensive proprietary control of the land by the Hudson's Bay Company. It was chiefly upon this issue that the Colonial Office refused to entertain the proposal, and the

> "Report from the Select Committee on the Hudson's Bay Company, together with appendix, embracing a copy of letters passed between the Colonial Office and the H.B. Company, dated March 11, April 6, and June 6, 1867, from the Colonial Office and April 15 and December 7, 1867, from the Company. The compensation should be derived from the future revenue of the lands, and of any gold which may be discovered in Rupert's Land, coupled with reservation of defined portions of land to the Company."
>
> "Correspondence relating the the Surrender of Rupert's Land by the Hudson's Bay Company and for the Admission thereof into the Dominion of Canada, 1868, p. 22."

that rights are stated in very exaggerated terms by the Colonial Office to be Natural Rights.

> "In my dissented judgment there is an attempt made to transfer the purposes of government and management, and the whole purposes of the Company depends on the proper and peaceful disposal of the land.
>
> "It is clear that adverted to the Rupert's Land rule here upon the legal revenue as legitimately belonging to the Colonists."[1]

When negotiations were resumed, therefore, in 1869, with a view to ending 'Rupert's Land' [illegible] the newly formed Canadian Confederation, the claim for 'compensation' was politely retained by the Company; but the claim was altered to the payment [illegible] of a sum of hard money, the sum of one million sterling, no lands being mentioned by the Company as a settlement which might be acceptable to the negotiators. The Company insisted, however, upon another Act of Parliament to guarantee this compensation for the surrender of Charter rights to the Crown, because section 146 of the B N A Act of 1867 would have left the claims of the Company at the mercy of Canadian courts. It thus came to pass that the instrument under which the surrender was effected was the Rupert's Land Act, 31 & 32 Vict. c. 105, which, as the Canadian delegates, Sir George E. Cartier and the Hon. William McDougall, pointed out, was not introduced at the instance or passed in the interest of the Canadian Government;[2] and behind the Rupert's Land Act, beyond a doubt, certain monetary considerations had already begun to appear.

Now it cannot be emphasized too strongly that Canada contended throughout for the transfer of Rupert's Land to Canada by Imperial Order in Council pursuant to the

[1] Correspondence relating to the Surrender of Rupert's Land, 1869, Appendix III, p. 60.

[2] See Sir Edward Cardwell to Lieutenant-Governor Archibald, Colonial Office, 27 June, Correspondence relating to Surrender of Rupert's Land, p. 30.

[3] Ibid. p. 31.

[4] Ibid. p. 46.

It is [illegible] [illegible], [illegible] [illegible], and without [illegible] [illegible] [illegible] third parties in the case. A memorandum drawn up by the Canadian delegates and approved by the Canadian Privy Council, December [illegible], 1869, expressed

> the opinion of the Canadian Government, that it is highly expedient that the transfer which the Imperial Government has authorized, and the Canadian Parliament approved, should not be delayed by negotiations or controversies with private or third parties.[1]

This [illegible] could be illustrated in great detail, and [illegible] [illegible] [illegible] by the [illegible] [illegible] [illegible]. It [illegible] [illegible], in the [illegible] of the [illegible] [illegible], [illegible] [illegible] of the [illegible] that the [illegible] territory [illegible] [illegible] to [illegible] all the rights as well as [illegible] [illegible] to [illegible] in all government and [illegible] [illegible] [illegible] as the Colonial Office [illegible] pointed out to the Governor General of Canada on December [illegible], 1869, was to [illegible] 'as a part of the British [illegible] [illegible].' [illegible] after the [illegible] [illegible] to the Hudson's Bay Company had been agreed upon, the Canadian Privy Council, December [illegible], 1869, [illegible] [illegible] between 'the surrender by the Company to the Queen and the transfer by Her Majesty to the Dominion.' In a telegram to the Colonial Office it is urged that 'the surrender by Company to Queen, the [illegible] [illegible] of the Company's [illegible]. The [illegible] of all [illegible] of affairs will then rest on Imperial Government. Canada cannot accept transfer unless quiet possession can be given.'[2] [illegible] upon this point is very conclusive.

[illegible] the [illegible] [illegible] was [illegible] through the [illegible], as already pointed out, of the Hudson's Bay

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[1] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Correspondence relative to the Surrender of Rupert's Land, 1869, p. [illegible]

[2] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] of Canada [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], 1869. Correspondence connected with Recent Occurrences in the North-West Territories, 1870, p. [illegible]

Company. And the whole transaction was effected by the H.B.C. Act, 1869, section 146, which, the Company pointed out that their proprietary rights would have been left at the mercy of Canadian courts. The new Act, therefore, the Rupert's Land Act, 1868, provided specifically for the surrender of all Charter rights in Rupert's Land to the Crown upon such terms and conditions as shall be agreed upon by and between Her Majesty and the said Corporation and Company, and by Order by Imperial Order in Council Rupert's Land shall, from a date to be therein mentioned, be admitted into and become a part of the Dominion of Canada. It is noticeable that the second of these provisions merely extends the H.B.C. Act, 1869, while Canada does not appear at all as yet in the text. The two Canadian delegates had no hand in drafting that Act.

> "Our last at the Vic., c. the Colonies was not introduced at the instance or passed in the interest of the Canadian Commissioners, called the negotiations of the terms of surrender by the Company to the Crown in the name of Her Majesty's Government where [illegible] we are of opinion it would be [illegible]."

It was therefore possible to have the way in which Canada became involved in this matter of 'negotiations' in the Hudson's Bay Company for the surrender of Charter rights to the Crown. The Dominion was drawn into the monetary matter because the other two parties in the transaction [illegible] the terms of the Rupert's Land Act. That matter had been settled in the House of Lords, but when it reached the House of Commons, [illegible] for the surrender of Charter rights by the Company and the accession of the Dominion under Her Majesty's Sign Manual and [illegible] upon such terms and conditions as shall be agreed upon by and between Her Majesty and the said

[illegible]

[illegible]

Governor and Company's' was amended by the addition of the following significant proviso:

> 'provided further that no Charge shall be imposed by such Terms upon the Consolidated Fund of the United Kingdom.'[n]

It became obvious, therefore, that if a pecuniary compensation 'in hard money' was a sine qua non of the surrender of the Hudson's Bay Charter rights in Rupert's Land to the Crown, and if the transaction was to involve 'no Charge upon the Consolidated Fund of the United Kingdom,' it would be necessary for Canada to undertake the indemnity to the Hudson's Bay Company. This was undertaken by the Canadian delegates under protest and without waiving the rights of direct cession from the Crown. The sum of £300,000, it was stated by the Canadian delegates Carling and McDougall to the Colonial Office, February 8, 1869, was regarded by them as a species of settlement by compromise (of course the

> cost of legal proceedings necessary, if any, for necessary, to secure possession. Compromises of this kind are not unknown in private life, and the motives and calculations which govern them may be applicable to the present case.'[o]

[n] Hudson's Bay Company Bill (H.L.)
Commons Amendment. Ordered to be printed, 23rd July, 1868.
The Rupert's Land Act received the royal assent, July 31, 1868.

[o] Report of Delegates appointed to negotiate for the Acquisition of Rupert's Land and the North West Territory, Ottawa, 1869.

This report was formally approved by Canadian Order in Council, on May 11, 1869.

The negotiations are remarkable for the precision and accuracy of the information of the negotiators. The only lapse on the part of the Colonial Office staff seems to have taken place under pressure of a pecuniary consideration [illegible] to large drafts altogether. Even here the argument of the Colonial Secretary is found to be specious to the point of the unnecessary. The Canadian delegates were pressing for the immediate transfer of the sovereignty of the whole territory, while the Company was willing for the payment of £300,000 in 'hard money' to transfer. The Colonial Office, concerned behind the amendment to the Rupert's Land Act [illegible] that 'no Charge shall be imposed [illegible] upon the Consolidated Fund of the United Kingdom' was in a position to declare all possible interest and responsibility. It belongs to the language of the

The terms were finally drawn up categorically by the Colonial Office and offered by the Colonial Secretary to the Hudson's Bay Company on March 9, 1869, 'not . . . as a basis of further negotiation, but a final effort to effect that amicable accommodation, of which he has almost despaired.' These terms[3] were accepted by the Company on April 9 and ratified by a joint address of the Senate and House of Commons of Canada on May 20 and 31, 1869, on the recommendation of the Canadian delegates.

Whatever monetary and proprietary considerations were necessary, therefore, in order to effect the transfer, it is seen that, both in theory and in fact, the surrender of the Hudson's Bay Charter rights in Rupert's Land to the Crown was the only part of the transaction which involved 'compensation' of any kind. This surrender was formally signed and sealed by the Company on November 19, 1869; it was formally accepted by Her Majesty 'under the Sign Manual and Signet' on June 22, 1870, and the transfer of Rupert's Land to Canada did not take place until July 15. The payment of the £300,000, though stipulated in the terms to be paid 'when Rupert's Land is transferred to the Dominion of Canada' was made, as a matter of fact, on May 11, thus synchronizing with the receipt of the deed of surrender by the Colonial Office. The sum of £300,000 which was to be

[illegible] Under Secretary, Rogers, confronted the Company in [illegible] demands for 'one million sterling, in bonds' with the uncompromising, [illegible] to say truculent, attitude of the Canadian delegates:

> 'You propose that the matter should be settled by the immediate payment of a fixed sum of money, or by the delivery of bonds . . .
> 'It is, I assume, obvious that this negotiation for the purchase of the Hudson's Bay Territory is really between the seller and the buyer, the Company and the Colony . . . Her Majesty's Government can merely offer to act as a channel of accommodation between these two real parties to the transaction.' Rogers to Northcote, February 22, 1869, *Correspondence relating to the Surrender of Rupert's Land*, 1869, p. 47.

As a matter of fact, the terms, as stated above, were drawn up categorically by the Colonial Office, and the *Rupert's Land Act* had definitely [illegible] such Terms and Conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company.' 31 and 32 Vic., c. 105, s. 3.

[3] *Correspondence relating to the Surrender of Rupert's Land*, 1869, p. 40.

indeed by have guaranteed by the British Rupert's Land Lands Act (62 & 63 Vic., c. 101), was there specified as 'for the purpose of payment to the Hudson's Bay Company on the surrender of Rupert's Land,' and the Company was neither tactively informed that 'the indemnity of £300,000 will be paid on due payment of the completion of their surrender.' The payment of the £300,000 was thus guaranteed not by the transfer of Rupert's Land to Canada, for that was effected, it will be seen, by full cession from the Crown; it was exacted by the Hudson's Bay Company as a *sine qua non* for the surrender of their Charter rights in Rupert's Land.

It may thus be contended that the object of both Canada originally and the British Government was not to perpetuate the old system of proprietary administration, the only difference being that it should be continued 'for the purposes of the Dominion' instead of for the purposes of the Hudson's Bay Company, but rather to extinguish altogether the old disabilities under the Charter of the Company in Rupert's Lands by 'its settlement,' as the Colonial Secretary pointedly emphasized, 'as a part of the British Colonial System.' In fact the whole transaction would seem to have been expressed nowhere more succinctly than by the Canadian delegates themselves:

> 'The surrender of the powers of government and of 'territorial jurisdiction by the Company to the Crown, 'and the transfer of those powers to the Canadian 'Government, are acts of State, authorised by Imperial 'Statute, and will have all the force and permanence of 'fundamental law.'[a]

Under circumstances such as these, the indemnity of

[a] By the agents of Canada, Messrs. Haggard and Cartwright.

Correspondence connected with the Recent Occurrences in the North West Territories, 1870, p. 130.

[b] 'Upon the Acceptance by Her Majesty of such Surrender, all Rights of Government and Proprietary Rights, and all other Privileges, Liberties . . . whatsoever, granted . . . to the said Governor and Company within Rupert's Land . . . shall be absolutely extinguished.' *Rupert's Land Act*, 1868, section 4.

[c] *Correspondence relating to the Surrender of Rupert's Land*, 1869, p. 46.

£300,000 to the Hudson's Bay Company, though paid by Canada, became entitled the Dominion to appropriate without accountability the public domain of Manitoba "for the purposes of the Dominion" to deprive the inhabitants of this province, "as a part of the British . . . System" of full rights over the lands by exchanging for a civil list, than the indemnity paid by Great Britain to the slave owners in 1834 entitled the Government to retain the slaves in a state of perpetual bondage to the nation.

It may be pointed that the West is not "the property" of Canada since the public domain is "vested in the Crown," and that the £300,000 was not "paid by" the rest of Canada for the West in any case. It was paid immediately by British bankers, and the amount was subsequently raised by Canada (including Manitoba) by public loan guaranteed by British Treasury Warrant of June 14, 1870, pursuant to the Rupert's Land Loan Act, the principal to be repaid on 1st April, 1904.[1] The per capita contribution of Manitoba to Dominion customs revenues was for many years the highest in Canada,[2] and thus were it the current conception of the status of Manitoba so largely prevalent in Eastern Canada, this province may be said to have discharged rather more than her share of the "purchase" price of her own public domain.

(b) The Negotiations and the Immigration

In order to trace this procedure consecutively it would be necessary to outline the Acts, Joint Addresses, parliament Debates, official reports, Orders in Council, etc. Some fifteen in numbers by which the surrender of the Hudson's Hay

[1] 33 Vic., c. 3, s. 30; 4 & 5 Edw. VII, c. 3, s. 61; 4 & 5 Edw. VII, c. 42, s. 31; Keith, Responsible Government in the Dominions, I, 110, etc.

[2] 53 & 54 Vic., c. 101. See Statement of Proceedings taken by the Lords Commissioners of Her Majesty's Treasury to give effect to the Guarantee of a loan for the £300,000 authorized by the Act 33 & 34 Vic., c. 101. June 28, 1870.

[3] Report showing Terms on which the Dominion Lands were negotiated in England. Can. Sess. Papers, 1869, No. 4, Paper No. 7b.

[4] Memorandum and Statements prepared by the Hon. the Provincial Treasurer of Manitoba, 1884, p. 11

Charter rights to Rupert's Land to the Crown and the transfer of 'Rupert's Land' and the 'North Western Territory' from the Crown to Canada were actually effected. The nature and implications of these, however, may be summarized in general terms, without unnecessary detail.

It may be stated at once that scrupulous regard for sound British constitutional procedure was observed throughout the difficult process of transfer, and that the implications of that procedure leave the British principles with regard to self-governing dominions and above all, with regard to Manitoba which was entitled with provincial status from the best in full force and operation.

There were, as already pointed out, two distinct transactions involved. The surrender to the Crown of the Hudson's Bay Charter rights to Rupert's Land, involving the surrender of all or any of the lands, territories, rights, privileges, liberties, franchises, powers and authorities whatsoever granted ... to the said Governor and Company within Rupert's Land,' was the only part of either transaction which involved 'compensation.' The second transaction was the transfer by Imperial Order in Council (June 23, 1870) by the Crown to Canada, not only of 'Rupert's Land' (which could be ceded only after the surrender of the Hudson's Bay Charter rights thereon) but of the 'North Western Territory' which was not within the 'chartered' territory of the Company and could, therefore, be ceded by the Crown without a preliminary 'surrender.' The statutory basis of the first of these transactions was the Rupert's Land Act, 1868; that for the second was the B.N.A. Act, 1871, section 146 which was interpreted in the Rupert's Land Act, section 6, in respect of 'Rupert's Land,' to order that the 'Address from the Houses of Parliament of Canada,' required by both Acts should include the 'Terms and Conditions ... agreed upon by and between Her Majesty and the said Governor and Company.' Pursuant to these two Acts the deed of surrender from the Company to the Crown is dated November

Rupert's Land Act, 1868, section 8.

the 1869 Act was formally accepted by Imperial Order in Council on June 23, 1870, and another Imperial Order in Council of June 23, 1870, provided for the union to Canada to take place on July 15, 1870. In all these documents, and particularly in the Imperial Order in Council of June 23, 1870, actually affecting the transfer, there would seem to be nothing more conclusively proven than the distinction between the surrender to Her Majesty of all the rights, privileges, franchises, powers and authorities of the Charter in Rupert's Land, and the union of Rupert's Land and the North-Western Territory (the latter without terms and conditions) to be admitted into and become part of the Dominion of Canada.

With regard to the North-Western Territory, therefore, it is to be noted that admission into the Dominion was permitted without any terms and conditions whatsoever by way of compensation to the Company. By the terms of the Rupert's Land Act it is seen that such terms and conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company apply exclusively to the surrender of all of any of the lands, territories, rights, privileges, liberties, franchises, powers, and authorities whatsoever granted by the said Letters Patent (viz., the Charter of 1670) to the said Governor and Company within Rupert's Land. The whole area outside Rupert's Land, therefore, could be regarded as coming to Canada by direct cession from the Crown, pursuant to the N.W.T. Act, 1869, without any the territorial appurtenances of proprietary franchises. As early as April 26, 1869, in fact, when the Rupert's Land Act was first proposed, the Colonial Secretary wrote to the Governor-General of Canada that

> "In pursuance and exercise of the powers vested in Her Majesty by the said Act of Parliament, the said North-Western Territory shall be admitted into and become part of the Dominion of Canada, and, it is further ordered that Rupert's Land shall be admitted into and become part of the said Dominion of Canada upon the following terms and conditions:

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

land, surrendered upon 'Terms and Conditions' in 1870, was subsequently included in the Provinces of Ontario and Quebec; in both cases the new territory was added by federal statute, and in both cases the provinces assumed automatically full beneficial control over the land. Perhaps the most anomalous transaction of all was the granting of the 'railway strip,' through Manitoba to Port Nelson, to Ontario at the *Manitoba Boundaries Extension Act of 1912*, the full rights of property therein being granted to Ontario while the land itself lies within the boundaries of Manitoba. Both 'chartered' and 'unchartered' territory ceded to Canada by the Crown in 1870, may, without impropriety be placed beneath the beneficial control of any province, it would seem, but Manitoba, Saskatchewan and Alberta.

By the constitutional procedure scrupulously followed in the transfer, therefore, both 'Rupert's Land' and the 'North Western Territory' came to Canada not from the Hudson's Bay Company by 'purchase' but from the Crown by 'Acts of State authorized by Imperial Statute,' with 'all the force and permanence of fundamental law.'[1] There were weighty considerations of national policy in 1870 for retaining temporarily a large measure of federal control over these lands in order to facilitate immigration, etc., but the phrase 'for the purposes of the Dominion' in the Manitoba Act has constituted for more than fifty years an unwarranted violation of fundamental British principles. In British Columbia, it seems to matter where the Hudson's Bay Company's rights by Letters Patent of January 13, 1849, in Vancouver Island had really been 'purchased' in 1867 by the British Crown, nor for £57,500, there was no attempt at rehabilitation by appropriating the beneficial interest in the public domain 'for the purposes of' Great Britain. British Columbia entered Confederation in 1871 with the full beneficial control of Crown lands in the province. By some oblivion of fundamental

[1] Correspondence relating to the surrender of Rupert's Land, 1869 p. 34 [illegible] Canada and Rupert's Land, 1870 [illegible] p. [illegible] 17.

16 and 17, 1867, the Canadian Houses of Parliament undertook to deal with the native population of Rupert's Land 'in conformity with the equitable principles which have uniformly governed the British Crown' Similar obligations, advocated by a Canadian Order in Council and enjoined by the Colonial Office, may be held to obtain with regard to this province 'as a part of the British System' since 1870.

SUMMARY

The reluctance of other provinces to concede to Manitoba the status in respect of public domain which they themselves have always enjoyed has long been defended upon the claim that Rupert's Land was 'purchased' from the Hudson's Bay Company and became therefore, the 'property' of Canada

(A) THE NATURE OF THE 'PURCHASE'

1 The HBC prepared in 1864 to recognize a Crown Colony in Rupert's Land provided the Company retained exclusive proprietary control of the land

2 This proposal was refused by the Colonial Office because 'colonists of the Anglo-Saxon race look upon the land revenue as legitimately belonging to the community'

3 The HBC therefore demanded (1865-6) 'the payment, in compensation of a sum of hard money' for the surrender of their chartered rights.

4 Canada however instantly urged direct cession by the Crown (in the BNA Act 1867, s 146) 'without negotiations with any third party in the case' Even when diplomatic for surrender of chartered rights became necessary, Canadian delegate regarded it as the 'cost of legal proceedings necessary to recover possession' Conclusive evidence of 'cession' as the official view of Canadian Government

5 In instance of HBC for monetary compensation led to the *Rupert's Land Act 1868* providing

(a) Surrender of all rights under the Charter in Rupert's Land to the Crown 'upon such terms and conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company'

(b) Union with Canada by Imperial Order in Council as under *BNA Act* Section 146

6 Canada was forced into this monetary transaction by amendment to the *Rupert's Land Act* in the House of Commons, by proviso that 'no Charge should be imposed by such Terms upon the Consolidated Fund of the United Kingdom'

7 Canada, therefore, was forced to indemnity the H.B.C. for the surrender of chartered rights in Rupert's Land to the Crown, and this was the only part of either transaction involving 'compensation' of any kind

8 Object of whole transfer was not to perpetuate proprietary administration 'for the purposes of the Dominion' but that the old 'Proprietary Rights,' etc., of the Company should be 'absolutely extinguished' (*Ruperts' Land Act*) in order to expedite 'settlement as a part of the British Colonial System' (*Colonial Office*).

9 The transfer from the Crown to Canada by Order in Council, therefore, was by cession with 'all constitutional implications unimpaired' 'the surrender by the Company to The Crown and the transfer to the Canadian Government, are Acts of State, authorized by Imperial Statute, and will have all the force and permanence of fundamental law' (*Canadian delegates*)

10 The £300,000 was raised by loan, guaranteed by the British Government, 'the principal to be repaid on 1st April, 1901'

(B) The Procedure and its Implications

1 Two distinct and fundamental transactions were involved

(a) surrender of the Hudson's Bay Charter rights in Rupert's Land to the Crown 'upon such Terms and Conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company.

(b) cession of 'Rupert's Land' and North Western Territory' to Canada by Imperial Order in Council of June 23, 1870

2 The statutory basis of (a) was *Rupert's Land Act*, that of (b) was *B.N.A. Act*, 1867, section 146, reiterated in *Rupert's Land Act*, section 8

3 The surrender of chartered rights in Rupert's Land by the Hudson's Bay Company to the Crown was dated November 19 1869; the surrender was received by the Colonial Office and £300,000 paid on May 31, 1870, the

surrender of chartered rights was formally accepted by the Crown by Order in Council of June 22, 1870, 'Rupert's Land' and 'North Western Territory' united to Canada on July 15 by Imperial Order in Council of June 23, 1870.

4. The 'Terms and Conditions' including 'compensation' provided for in the *Rupert's Land Act* apply exclusively to Rupert's Land. The whole area outside Rupert's Land (the North Western Territory), therefore, had to be regarded as coming directly to Canada from the Crown by session under B.N.A. Act 1867, section 146, and without even the hitherto nominal pretendings of parliamentary 'purchase.' This is clear from the correspondence of the Colonial Office at the time of the *Rupert's Land Act*. The attitude of the Canadian Government was:

5. Mainland district of British Columbia already joined Canada out of 'licensed' territory—in same relationship to H.B.C. as North Western Territory, and full beneficial control of public domain was vested in B.C. in 1871.

6. Similarly, districts from the 'chartered' territory of Rupert's Land were added both to Ontario and to Quebec with full beneficial control vested in those provinces, despite so-called 'purchase' by Canada in 1870 from within boundaries of Manitoba. Ontario was granted 'property in the soil' subject only to that taken at the Manitoba boundary, February 17, 1873.

7. Manitoba, Saskatchewan and Alberta appear to be the only provinces of Canada which cannot be contrasted with beneficial control over either the licensed or 'chartered' territory of the H.B.C. ceded to Canada in 1870.

8. By the constitutional precedents completely followed in the Act, the Colony both Rupert's Land and the North Western Territory came to Canada not from the H.B.C. by purchase but from the Crown by Order of State, authorized by Imperial Statute, with all the force and permanence of fundamental law.

9. In 1871 British Columbia (as Province VI) received full beneficial control over public domain both licensed and ceded in 1858 and 'Indian' lands which had been purchased from the H.B.C. in 1867 for £10,000. It is admitted that Manitoba (Province I) in the same fundamental right as from 1870 was a part of the British Empire.

IV

THE "TRANSFER" AND PROVINCIAL STATUS FOR MANITOBA

The Manitoba Act of the Canadian Parliament (subsequently confirmed by the B.N.A. Act of 1871) received the royal assent on May 12, 1870. It was to come into effect "on, from and after the day upon which the Queen shall, by Order in Council in that behalf, admit Rupert's Land and the North Western Territory into the Union or Dominion of Canada" so that Manitoba has never occupied any other than provincial status in the Canadian Confederation. The order in Council of June 23, 1870 which transferred Rupert's Land from the Crown to Canada on July 15 of that year thus made Manitoba a Canadian province, and the British principles already outlined apply here with peculiar direction and emphasis to the whole Canadian period of our history since 1870.

Neither the Colonial Office nor the Canadian Government had contemplated the immediate establishment of provincial government in Rupert's Land. Canada provided a liberal constitution as soon as the needs and requirements of the territory should be ascertained. But the inhabitants of Red River were not at first in favor of provincial status, and in fact expressed themselves against it on the only occasion when their wishes were formally canvassed in the matter. At the Convention of both English-speaking and French of that fairly to most liberal basis, although [illegible] Canadian Government [illegible] of the Canadian Government would [illegible] a Provincial land south expect that it had not [illegible] in other [illegible] of things. While the matter [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Commissioners meeting at the Convention of February 1870 but upon a scroll list drawn up at Bishop's Palace of Boniface which remained unknown to the delegates of Manitoba for nineteen years until it was produced by Archbishop Taché during the discussion of the Manitoba School Question. It will be admitted that the Manitoba Act as an instrument of Union was not the result of the agreement of every other province, either before or after the Confederation of mutual legislative agreement between Canada and the provinces. [illegible] had no part in the negotiations to report at that time [illegible] but both the British and Canadian governments relied on [illegible] the Manitoba Act as subject to disagreement by the Federal Government. The Manitoba [illegible] subject under the jurisdiction of the Dominion in the [illegible] of the rights of [illegible] and particularly those [illegible] to the public schools also imposed upon the [illegible] of the [illegible] provinces not only without their consent but [illegible] against their protest.

[illegible] that [illegible] the [illegible] of the public schools was subject [illegible] of the Manitoba Act by the [illegible] that

[illegible] in the Province [illegible] and [illegible] in the [illegible] by the Government of Canada for the [illegible] Manitoba.

[illegible]

Unfortunately the special privileges embodied for the French in the *Manitoba Act*, and particularly the offer of a direct grant of 1,400,000 acres of land 'for the benefit of the families of the half breed residents' (33 Vic., c. 3, s. 31) were arrangements which speedily renewed the opposition of the French Métis to the federal control of provincial lands. No precautions were taken to safeguard in the statute even the right as distinct from the immediate claim to the ultimate control of the land and the full beneficial interest therein, as from the inception of 'responsible government' and provincial status in a British Dominion.

The incidents outlined above are strongly contrasted by the fact that whatever considerations of national policy may have actuated the Federal Government in exercising, under the circumstances, temporary 'control' over the public domain in 1869, the provisions in Section 30 of the *Manitoba Act* are known to have contravened the rights of the inhabitants [illegible] in every existing record of the Dominion at that time. This is true and merely of the 'Bills of Rights' drawn up [illegible] under that influence. It is emphatically true of the great mass of English speaking as well as French inhabitants of the territory, and this will be seen to be the [illegible] by the brief consideration of the evidence upon this point.

During the period from December 1869 to April, 1870, there are no records to hand than four of these bills of rights.

[illegible]

[illegible]

(c) That of December 1, 1869, drawn up by Riel and his followers and showing the local insistence of all upon local control over the public domain. Clauses 6 and 7 of this list are as follows:

> '6. That a portion of the Public Lands be appropriated to the benefit of schools, the building of Bridges, Roads and Public Buildings.
>
> '7. That it be guaranteed to connect Winnipeg by Rail with the nearest line of Railway within a term of five years, the Land Grant to be subject to the Local Legislature.'

(d) At the first representative Convention called to meet Commissioner Smith at Fort Garry in February, 1870, a committee was appointed to draft a 'list of rights' as a basis of discussion. Two lists were drawn up, one on the basis of provincial status (drawn up under Riel's influence but thrown out as already dealt with by the Convention without being read or discussed) and the other on the basis of territorial status. The first was discussed clause by clause and to each one Commissioner Smith replied for the Canadian Government. Clause 15 reads as follows:

> '15. That the Local Legislature of the Territory have full control of all the public land north of a circumference having Upper Fort Garry as the centre and that the width of the circumference be the number of miles that the American line is distant from Fort Garry.'

Commissioner Smith replied to this that 'full and ample central power will be given in the matter.' This point has not been regarded as the only one to which the inhabitants of the Red River settlement, as a whole, can be said to have been their spokesman, and it is to be noticed that the demand for the control of the public lands even under territorial status is made in the most explicit terms.

(c) The list drawn up on the basis of provincial status was supplied nevertheless by Thomas Bunn as Secretary of State of Riel's Provisional Government to the three legal delegates who eventually proceeded to Ottawa, and it was printed in French at the Bellemont on the eve of their departure. This list was erroneously considered to have launched the basis of the conference on the *Manitoba Bill* at Ottawa and it was printed accordingly in the British Blue Book *Recent Occurrences in the Red River settlement*, 1870. In this list clause 11 reads as follows:

> 11 That the Local Legislature of the Province of Manitoba shall have full control over all the public lands of the Province and the right to amend all acts or arrangements made or entered into with reference to the public lands of Rupert's Land and the North West, now called the Province of Manitoba.

(d) The second list of rights upon which Father Ritchot based the discussion of the *Manitoba Bill* at Ottawa and embodied in substance for the first time in Bunn's clause eventually embodied in section 30 of the *Manitoba Act* was drawn up secretly on already stained at Bishop's Palace in Montreal and was not published thirteen years afterwards to Archbishop Taché during the school controversy. In this list clause 11 reads as follows:

> 11 That the Local Legislature of the Province shall have full control over all the lands of the territories.

It is seen therefore that in respect of public lands the *Manitoba Act* contravened every formal expression of opinion both English-speaking and French in every list of rights drawn up at the Red River Settlement during the period of transfer. There were undoubtedly many rights conceived national policy in relating federal control of the public domain in 1870 such as Mr. Bunn's a uniform policy of immigration, the requirement of transcontinental rail

[illegible] to bring British Columbia into Confederation etc. Whatever may be thought of the proviso that the land should be vested in the Crown and administered by the Government of Canada, however, the unfortunate phrase for the purpose of the Canadian Act never appears to any other light than an unnecessary and dishonorable violation of the fiduciary obligations which Canada had undertaken to undertake with regard to these territories as a part of the British Colonial System and in contravention with the equitable principles which have uniformly governed the British Crown. The statutory appropriation of the beneficial interest as well as the control over the public domain within West as appears in the Alberta and Saskatchewan Act (4 & 5 Edw. VII c. 3 s. 21 and 4 & 5 Edw. VII c. 42 s. 21) is positively and gross in the Manitoba Boundaries Extension Act of 1912. This province therefore has the most notable distinction against the provinces of Canada and the self-evident Guardians of the Empire and seem to have been both the colonial administration in respect of public lands by provinces in the Manitoba Act contemporary policy towards Confederation of the Aborigines of the country but of having lost the self-rule which it had been to adopt manifested by statutory enactment in the Indian Act and subsequently from

CLAUSES

1. The Manitoba Act provided that upon transfer of Crown to Dominion Order in Council should be one of the Provinces of the Dominion of Canada. In the case of the Provinces therefore they have been no provinces prior of Dominion rights and British provinces. Thus upon with provincial powers and duties in the British Dominion period of [illegible] before since then

2. The [illegible] of the Act [illegible] and the [illegible] which [illegible] [illegible] and [illegible] in the Manitoba Act have created an unworkable and [illegible] [illegible] which [illegible] the province

3. With respect particularly to the biggest capital of the public domain the control of lands in fact the property in

that of the [illegible] for fifty years. They wished to have all the lands [illegible] as the other Provinces. The land could not be handed over to them. [illegible] Province [illegible] with the [illegible] the Government [illegible] The land legislation of the Province [illegible] to immigration. Sir John A. Macdonald in debate on Manitoba Bill.

[illegible] The Manitoba Act contained [illegible] that of lands which remained practically unknown to the inhabitants of Manitoba for nineteen years. Both the British and Canadian authorities [illegible] the Manitoba Act as [illegible] by the "[illegible] Government" which would [illegible] a recognition of that and the [illegible]. [illegible] Manitoba [illegible] among the [illegible] of [illegible] the [illegible] of the [illegible] particularly those relating to the [illegible] upon the inhabitants of this [illegible] their [illegible] without their [illegible].

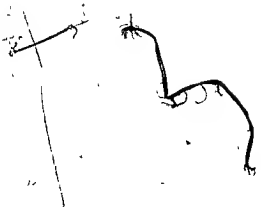
[illegible] the [illegible] for the administration of "All [illegible] of [illegible] lands [illegible] by the Government [illegible] for the purposes of the Dominion [illegible] of the Manitoba Act. [illegible] the [illegible] of all the lands of the [illegible] the Dominion Government [illegible] to the half-breed inhabitants [illegible] acres of land which [illegible] [illegible] British and Canadian [illegible].

[illegible] the [illegible] English-speaking and French [illegible] all the public lands [illegible] the [illegible] of [illegible]

[illegible] of the [illegible] the Manitoba [illegible]

[illegible]

[illegible]



the spirit of Confederation contemplated. That is not as it should be, and there is [illegible] to be felt all over the Province among those who are doing their best to develop the resources of the country [illegible] on the footing of being entitled to the same responsibility of Government and jurisdiction of Canada and Ontario, as are the citizens of other Provinces, whilst denied in the enjoyment of those sources of revenue allowed other members of Confederation for the promotion of their own development [illegible]

That this state of affairs should continue is neither fair to the Province nor creditable to the Dominion, and as the Federal Authorities are responsible for the distinguishing restrictions and restrictions imposed upon the Province, the undersigned feels it his duty to repeat these facts [illegible] for consideration to the Privy Council, with the hopeful and favorable consideration of the subject, that every consequence implied to be complete.[1]

The result of a delegation to Ottawa in May, 1884, was an agreement by the Federal Government that the 'swamp lands' at least shall be transferred to the Provincial Government and inure wholly to its benefit.[2] With the exception of the 'school lands' in which the control was vested in the Dominion while the beneficial interest reserved to the province, the 'swamp lands' were thus the first largely and realized, until they reverted to the Dominion in 1914, the only lands of the public domain in Manitoba in which British promoters have ever obtained, and even here the precedent, it will be seen, was not British but American.

This utterly inadequate concession, however, was not by a vigorous protest (June 4, 1884):

> 'The proposal that this Province shall become possessed of only the swamp lands, together with the grant of $100,000 a year, is not acceptable to this Legislature as

> 'And this feeling is intensified by the fact that the population of Manitoba is largely composed of settlers from the older Provinces who have been accustomed to enjoy all the liberties conferred by Provincial Legislation by the full application of the B.N.A. Act.'

[1] Can. Sessional Papers, 1885, Vol. 19, Paper No. 104.
[2] Can. Sessional Papers, 1885, Vol. 19, Paper No. 61.

in compensation of the equitable claim that this Province has always preferred to all the lands granted.[iii]

The humiliating result of the conference of December 30, 1887 - January 10, 1888, has already been indicated. Premier Mercier was confronted at Ottawa with a bill of federal expenditures in the West from the cost of the expeditionary force down to the latest return of the surveyor, as well as of moneys granted in compensation to the Indians.[iv] The delegation in despair reverted to the proposal of 1887 that the Dominion pay the Province annually the sum of $100,000 in lieu of lands, and the "healthy change" already outlined, postponed the abandonment of the province to its admittedly inadequate attempt to secure from the Dominion Government payment for the lands already disposed of by them within the Province and the control, management and sale of the public lands within its limits, for the public good.[v]

The granting of the "subsidy in lieu of lands" was interpreted, it has been seen, even by Sir Wilfrid Laurier, as proof that the "guiding principle" of Confederation with regard to the public domain was "and absolutely departed from in the case of Manitoba."[vi] It is apparent, however, that though this may have been true with regard particularly to the lands already permanently alienated from provincial control, the principles at the root of the whole issue were by no means abandoned. Even the transfer in 1887 of the "remaining lands" to the province "to have wholly to its benefit" was based, like

[iii] Journals of the Leg. Assembly, Manitoba, 1888, Vol. xxi, Appendix A; Cf. Can. Sessional Papers, 1888, Vol. 19, Paper No. 108. Thus the "special grievance which lies alone at the foundation of the prosperity of the Pacific Coast" was fully appreciated at the Capital. The confirmation indeed of the doctrine was that the Province should be placed on the same footing as are the other Provinces of Canada, "especially in the policy followed by the U.S. towards their territories which admitted into the Union."

[iv] Address to Governor-General, June 4, 1887, Journals of the Leg. Assembly, Manitoba, 1888, Vol. xxi.

[v] "That the provinces were entitled to the public lands as a source of revenue to relinquish to the growing wants of the Dominion." Sir Wilfrid Laurier to Hon. R. Greenway, August 7, 1911.

[vi] Ibid.

[illegible]

A Report of a Committee of the Canadian Privy Council, approved March 7, 1905, [illegible] in part as follows:

> [illegible]

Finally the well known Report of the Committee of the Canadian Privy Council, approved May [illegible], 1905, and quoted further above, [illegible] it is only fair to add, in that [illegible] that [illegible]:

> [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

by popular opinion of military, the area known under the Act of 1862 as Bounding Lands.

Now it is an interesting fact that even little American speculation would accept the claims of Manitoba, for the Indian domain (in the American sense) as an area taken from never of the states of the Union, nor state was limited without practical territorial claims and as adopted in many of the states afterwards purchased by the National Government from other original owners. In the case of these Canadian States, as they were called, Ontario, Vermont, Tennessee, Maine, West Virginia, etc., adjacent to the Union carried with it not merely territorial and but the old and originally over the Indian lands within their boundaries. In fact this is the case even with regard to Texas, which was admitted in 1845. West Virginia came into the Union with full title to Indian lands as late as 1863. It will be remembered that Manitoba came into the Confederation with practical organization in 1870 and without previous territorial claims under the Dominion. The main thing in Canada which affected the transfer of the Indian from the Crown rights to the Dominion Government, and as already pointed out, British land in any American jurisdiction only been with peculiar circumstances and especially in the whole Canadian period of our history since 1870.

In addition to this general national Indian domain in the United States, however, the National Government acquired as Indian Tribes by purchase, treaties or treaty, a vast area of nearly 800,000 square miles at a total cost of over $100,000,000. These areas were populated with territorial claims, and from these territorial claims were subsequently created and admitted to the Union. It became a principle for the National Government in the consideration of these lands claims, as they began to be called, to treat equally the Indian domain, after taking special grants, however, which lands, universally lands, awards lands, etc., to the states. It is not difficult to recognize in the school lands of Manitoba, railway land grants, bounty lands granted to the provinces in

1881 and everything to the Federal Government in 1870[illegible], and in many details of administration, survey, etc., the results of American examples; but one leader in vain for eight provinces on the State Selection Act, 1881, by which 500,000 acres for the purpose of 'Internal Improvements' were granted to each State that shall hereafter be admitted into the Union. In the time that American precedents were first avowed by the Dominion with regard to Manitoba, the lower than seventeen states had received 7,000,000 acres in this way. Analogous like the United States Homestead Acts, the Canal Wages and Railroad Grants in various states of the Union, the 'Two, Three and Five per cent. Funds' upon the net proceeds of the sales of public lands allowed to many states 'from the date of admission into the Union,' are not in evidence in the case of Manitoba. It was twelve years after admission provincial status before this province found the Federal Government willing to allow to Manitoba the sum of $10,000 a year, 'as in lieu of lands.' In lieu of lands.

Despite the fact that American precedent was more and varied in 1881 than it might now appear to be nevertheless the policy then commenced proved currency with Federal Governments at Ottawa for twenty-five years, though not without protest, both federal and provincial, in favor of sounder principles of British procedure. It is necessary in the interests of historical fact to observe that the American

Legislative Documents, 46th Congress, 3rd Session, Vol. 46, p. 146, etc.

Act 1878 by which 10 per cent. of all the net proceeds of the sales of public lands in all the States admitted to Congress after 1841, were to be divided into two equal shares, the Twenty-five Sixths and the Territories of Washington, Oregon, and Dakota, and the District of Columbia, according to respective federal population. The Public Domain, 46th Congress, 3rd Session, Executive Document 17, Part 4, p. 400.

The Public Domain, 46th Congress, 3rd Session, Executive Document 17, Part 4, p. 400, etc.

Cf. Report of Committee of Can. P.C., May 30, 1881. 'The attention of the Hon. Committee has been directed to the intention of the Federal Government of the United States to the representation of new States, and it may appropriate to specific purposes, adhering to the Bishop and Sheriff Powers, Hon. Vol. 16, Paper No. 61.

Sessional Papers, 1882, Vol. 16, Paper No. 61.

Laurier, on rather the perversion of it avowed by the Canadian Privy Council, 1910-11, received perhaps the most unqualified endorsation for this generation at the introduction of the *Alberta and Saskatchewan Bills* in 1905:

> "This is a case in which we can go to the United States for precedents. They are situated very much as we are regarding the ownership of lands and the establishment of new states. Whenever a new state has been created in the American Union, the Federal Government has always retained the ownership and management of the public lands . . . ."

Beyond a doubt the requirements of the situation in 1905 were very difficult, and sections 20 and 21 of the *Alberta and Saskatchewan Acts* were advocated, and eventually drafted, as affording the strongest argument with which to appeal both to the people of the new provinces and to the people of the older provinces. The same may perhaps be said of the *Manitoba Boundaries Extension Act* of 1912, when this province was placed upon an equal footing with the two other Prairie Provinces with regard to area and 'subsidy in lieu of lands.' The fact remains, however, that the basis of the subsidy 'in lieu of public lands' in 1905 was necessarily more or less arbitrary, and the Premiers of the three Prairie Provinces (Hon. Messrs. Sifton, Scott and Roblin) in December, 1918, in the attempt to reach a common basis for the perpetuating differences of status and development between the three provinces concerned, were forced into a position

> "We know that when Manitoba was brought into the Confederation, that province was not given the ownership of her lands . . . . The application was always not in the same way. It was always said by the supporters that it was intended to treat the regions. The matter was finally closed by Sir John Macdonald, in which he . . . more very forcibly and clearly the reasons why the power of that province could not be entertained." Sir Wilfrid Laurier, *Hansard*, 1905, p. 1401.

> "Everything for the subsidy 'in lieu of public lands' and for the adjustment of All Crown lands, mines and minerals and royalties included therein . . . by the Government of Canada for the purposes of Canada."

> "The legislation was intended to place Manitoba on a basis of equality with Saskatchewan and Alberta. So far as I can remember, the allotted 25 did not mean more than this." Sir Robert Borden to Premier Roblin, January 9, 1918.

which has been completely misunderstood and misinterpreted by other provinces of Canada, as a proposal to 'retain the money and get the lands into the bargain'.

> 'That the financial terms already arranged between the Provinces and the Dominion as compensation for lands already stand as compensation for lands already 'alienated' for the general benefit of Canada, and that all lands remaining within the boundaries of the respective Provinces, with all natural resources included, be transferred to the said Provinces.'[1]

It must be emphatically repeated at this point that the subsidy in lieu of lands in Manitoba was first demanded for lands already alienated (the consideration of the lands within Manitoba appropriated by the Dominion for the building of the Canadian Pacific Railway); that it was granted 'as is done in 1869'; and that from the standpoint of this province the present subsidy will be found to be an altogether inadequate compensation for the resources alienated during the past fifty years by the Government of Canada for the purposes of the Dominion. It will be sufficient here to remark that the proceeds of the railway and Hudson's Bay land sales alone (December 31, 1917) had reached the total of $178,000,000 from the grants made to them from the public domain of the West, and that over 14,500,000 acres still remained to be disposed of. For practical purposes, therefore, the historic claims of this province might be formulated in two general terms as:

> (a) the unrestricted beneficial control of all public lands and natural resources within the boundaries of the province hitherto unalienated;
>
> (b) compensation at a fixed equitable rate per acre for all lands within Manitoba alienated to the Hudson's

[1] Resolution Seventh, Moved by Premier Roblin, December 22, 1919.

[2] The futility of any method of determining equitable 'compensation' by balancing Dominion receipts and expenditures from Dominion Lands is obvious, since in the case of probably all the other alienations the lands have been granted free, while the interests of the Dominion are already indirectly in other ways. Cf. railway land grants and free homesteads, and the high tariff equitable enormous revenues from new settlers.

Bay Company at the transfer and under section 30 of the Manitoba Act by the Government of Canada for the purposes of the Dominion' with compensation to be made by way of annual payments at 5 per cent., and to be reckoned as from the date of alienation, less the amounts received as subsidies in lieu of lands.

SUMMARY

1. 'Two considerations were chiefly responsible for the agitation for provincial rights over the land', viz., the intolerable financial burdens for local works on account of the free homestead and immigration policy of the Dominion and the practice of large grants for railways.

2. Claims of Manitoba (Memorandum, Feb. 19, 1881) were advanced (a) that a subsidy of $100,000 (the same as in B.C.) be granted 'in consideration of the lands within Manitoba appropriated by the Dominion for the building of the Canadian Pacific Railway', (b) that 'the receipts of the granted land shall be handed over to the Province for the purpose of local revenue.'

3. The case of B.C. ($15,000) was substituted by the Dominion for that of B.C. ($100,000), and the grant was eventually made (1884) as is done in B.C. (report of Committee of Can. P.C.). It may be contended, therefore, that both the original claim 'in consideration of the lands within Manitoba appropriated for the building of the Canadian Pacific Railway' and the grant substituted for it as is done in B.C., are based not upon future control of ungranted or waste lands in the Province' but upon lands already permanently alienated without regard to the benefit of local interest of the community. (Cf. the proposals of Dec. 29, 1878, 'that the financial terms already arranged as compensation for lands should stand as compensation for lands already alienated for the general benefit of Canada.')

4. 'Swamp lands' were transferred to the province in 1884, but the subsidy of $100,000 in lieu of lands in 1884 was made contingent upon the 'quality clause'. This completed the disemburture of the province in the attempt to secure 'payment for the lands already disposed of within the Province' and the 'control, management and sale of the Public Lands within its limits, for the public uses thereof.'

5. The 'subsidy in lieu of lands' was interpreted even by Sir Wilfrid Laurier as proof that the 'guiding principle' of

[illegible]

[illegible]

[illegible]

[illegible]

In the United States [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

retained the ownership and management of the public lands.' (Sir Wilfrid Laurier).

15. Basis of subsidy in 1905 and 1912 was more or less arbitrary, but the proposal of December 22, 1918 (present subsidy as 'compensation for lands already alienated') was abandoned by the necessity of providing a common basis for the perplexing differences of status and development between the three provinces concerned.

16. Manitoba's original 'subsidy in lieu of lands' was 'in consideration of lands within Manitoba appropriated by the Dominion for the building of the Canadian Pacific Railway' and even the present subsidy is altogether inadequate for railroads alienated for fifty years 'for the purposes of the Dominion.' Railway and H.B. Co. land sales alone (Dec. 31, 1917) amounted to $178,000,000, and there are 14,000,000 acres left.

17. Claims of Manitoba may thus be stated in less general terms as:

(a) Unrestricted beneficial control of all public lands and natural resources hitherto mismanaged.

(b) Compensation at a fixed equitable rate per acre for all lands within Manitoba alienated by the H.B.C. at the transfer, and under section 10 of the Manitoba Act by the Government of Canada for the purposes of the Dominion; and compensation to be made by way of annual payments at 5 per cent., and to be reckoned as from the date of alienation, less the amounts received as subsidies in lieu of lands.

18. The balancing of Dominion receipts and expenditures from Dominion lands is obviously a fickle method of determining equitable 'compensation.' Other alienations have been free grants, 'the purposes of the Dominion' being attained indirectly in other ways. Cf. railway land grants and free homesteads, and the high per capita customs revenues from new settlers.

BRITISH PRINCIPLES IN THE ABORIGINAL PROVINCE OF CANADA

The half-century of conflict for 'provincial rights' in Manitoba and the ascendancy of sound British principles at Ottawa are counterparts of the only process which would seem to offer paradise of settlement of the 'Natural Resources Question'. With regard to the first, the name of Premier Norquay will always hold a conspicuous and as the first native premier of the province perhaps a pre-eminent place. The memorandum drawn up by him in his 'fight for provincial rights' may be classed among the important state papers of the Dominion. Based not upon ignorant constitutionalism but upon the practical requirements of the case, the insistent demands for 'payment for the lands already disposed of . . . within the Province,' and the 'control, management and sale of the Public Lands within the Limits, for the public uses thereof,' are in a sense very typical of that unerring practical political instinct among British peoples which solved the whole question of responsible government in the first place and applied the principles then vindicated to all the self-governing provinces and Dominions of the Empire.

Premier Norquay's long contest with Ottawa closed like his own sturdy career in his native province, in a sanguinary but institutional attempt to cope with conditions that were too strong for him or perhaps for any man. For the counterpart of Premier Norquay's work, it is necessary to look to sound constitutionalism at Ottawa; and the outstanding name in this respect is beyond doubt that of Sir Robert Borden himself. It will not be necessary to trace in detail the gradual emancipation of federal policy from the tangle of opportunism and necessity which so long prevailed during the formative period

[1] Address to Governor General, June 9, 1884, Journals of the Leg. Assembly, Manitoba, 1885, Vol. XVI.

of Canadian history after Confederation. The problems which confronted the builders of the Dominion were perhaps as [illegible] as any which have ever been attempted in such a country, and it would be altogether less than just to disparage in any way the importance of their conception or their courage in achievement. Beyond a doubt, however, the experiments that were found to be necessary were made in [illegible] more than one, and as Lincoln once said with regard to the American Civil War, constitutional principles must be regarded as having had to [illegible] time of it. The [illegible] is now more [illegible]. The sound and [illegible] constitutionalism which has guided our national destinies would appear to be the only line of policy which is capable of [illegible] the anomalies of Confederation than at [illegible]. It is altogether fitting and proper. Indeed there are very specific reasons why it would appear to be [illegible] that these two purposes should be accommodated at the same time.

The [illegible] of British principles up to the Conference of [illegible] [illegible], must be [illegible] very briefly; as briefly in fact as it may be deemed advisable in default of the publication of the documents upon the subject.

At the introduction of the Alberta and Saskatchewan Bills in [illegible], Sir Robert Borden, then leader of the opposition, [illegible] that the constitutional principles involved by [illegible], as

[illegible]

[illegible]

[illegible]

already noted, namely, the [illegible] their land as [illegible] by the people of the other provinces.

> In [illegible] Sir Wilfrid Laurier said it might interfere with the [illegible] of the policy of the government with regard to immigration. [illegible] the [illegible] would have justified the [illegible] by the [illegible] government up to the present time [illegible] Canada.

With regard to Manitoba's [illegible] in [illegible] imperial [illegible] of crown lands in the interests of an imperial policy of administration.

> It was [illegible] that it was absolutely [illegible] the control of the public lands. [illegible] the people of the [illegible] are entitled to the control of their lands [illegible] the people of the [illegible] provinces of Canada are entitled to the control of their [illegible]

It is well known that Sir Robert Borden attempted in [illegible] the restitution of the public lands to the provinces of Alberta and Saskatchewan upon fair terms. [illegible] and still [illegible] in the fact that there was no [illegible] in this [illegible] long period of responsible government without full [illegible] in the [illegible] to the provinces in any [illegible] after the [illegible] of half a century, and in the [illegible] of the provinces to 'colonial' status by Imperial Act [illegible] for all purposes whatsoever.' In a very [illegible] statement in Winnipeg, however, in June, [illegible], Sir Robert Borden expressed the opinion that all three Prairie Provinces were entitled to the full recognition of their [illegible]

[illegible]

[illegible] rights in their public lands and natural resources [illegible] Premier in the Convention, two years later, the Federal Minister pointed out that even in the cases of Alberta and Saskatchewan, there was already [illegible] February 24, 1927 [illegible] which had [illegible] to be [illegible]:

> In the cases which we have [illegible] negotiated had been carried out. The difficulties which have [illegible] to the negotiations before [illegible] could be [illegible] to the western provinces [illegible] Parliament and the [illegible] Parliament.

A conference which had taken place at Ottawa during the previous October had resulted in the submission of the well known proposal of December 22, 1926, by the three western Premiers, Hon. Messrs. Gardiner, Brady and Medicine:

> That the proposal being already arranged between the Dominion and the Corporation of Manitoba for lands should be considered to include already adopted for the natural resources of Canada, and that the lands remaining within the jurisdiction of the respective provinces, that all natural resources included, be transferred to the said provinces.

Having the correspondence which showed to you proved that by Premier Bracken that several important points in the proposal of the Conference had not been treated upon in the

> [illegible] in Canada are interested [illegible] the right to control and administer [illegible] Parliament [illegible] Provinces [illegible] Parliament [illegible] Provinces [illegible] Parliament [illegible] Provinces [illegible] Parliament.

[illegible] Parliament, June 30, 1927.

[illegible] Parliament, June 30, 1927.

[illegible] 1927, Vol. [illegible]

[illegible] proposal of December [illegible], 19[illegible]; while the provincial Premiers defended their emphasis upon the financial terms upon the grounds that that proposal had been

> based upon the two fundamental principles which were [illegible] by yourself in explaining your policy in this [illegible] first, the right of the provinces to the [illegible] of the public domain, and second, their right to compensation for such portions of the public domain as have been alienated for the general benefit of Canada. [illegible]

Premier Borden's reply, dated March [illegible], 1914, re-affirmed the necessity of including other fundamental aspects of the subject in the discussion, and concluded by observing that:

> With regard to these considerations the conditions in the three Provinces are [illegible] and altogether [illegible] and each of the three Provinces is entitled to have its point of view considered.

Without ever emphasizing here either the obvious difficulties of reaching a uniform, as distinct from an ultimately equitable, basis of settlement for the three provinces respectively, or the advantages which may be found from the standpoint of ultimate legal equality by an adherence to the three principles outlined in this memorandum, the remaining [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] 1914.

[illegible] to Premier Borden, [illegible], 1913.

of negotiations to the present time may be outlined very briefly.

With the exception of an interchange of letters in the spring of [illegible] with regard to the 'school lands' the '[illegible] Question' was naturally laid to rest in the period of the war. It was not until December, [illegible], that a further Conference was arranged at Ottawa for the consideration of the whole question. The Federal Government, however, in the absence of Sir Robert Borden, placed the matter before a Conference of representatives of all the provinces of Canada, with an intimation that

> The Government was disposed to give favourable consideration to the request for the transfer of the natural resources, but it was also intimated that the claims for the compensation of the [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] to the other provinces of the Dominion.

The immediate result of the conference was a resolution by the representatives of all but the Prairie Provinces to the following effect:

> Whereas the representatives of the Government of [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible]

[illegible]

It may thus be said that pending the return of [illegible] to normal federal channels, the Natural Resources Question has now been [illegible] to the limits of [illegible] of the Prairie Provinces [illegible]

It remains, before concluding, to consider briefly two supplementary features of the Natural Resources Question which would seem to call for special consideration.

In connection with the proposed return of the public domain to the Prairie Provinces there have been suggestions of [illegible] which would appear to require a very clear-cut declaration of principle if the status of the Prairie Provinces within the Dominion is not to remain still very [illegible] impaired.

During the debate on the Alberta and Saskatchewan Bills in 1905, Sir Robert Borden, in advocating [illegible] the same control over their lands as is enjoyed by the people of the other provinces, suggested that.

It would be the task of [illegible]

[illegible] Dominion Lands Act, [illegible]

'bequeathed and the prices of these lands, and obtain for it the consent of the people of the Northwest Territories.'[a]

Similarly in Sir Robert Borden's reply to the original proposal of Western Premiers on December 24, 1918, two 'aspects of the subject' under consideration are outlined as follows:

> '3. An arrangement with the respective Provinces for which provisions with respect to homesteading should be retained in force or other suitable provisions adopted.
>
> '4. Such additional stipulations as might be considered necessary or desirable for the purpose of securing conditions that would not militate against a continued flow of desirable immigration.'[a]

Now the resolution from the representatives of the other provinces of Canada at the Conference of November, 1918, refers to the proposed transfer of the natural resources to provincial control as favoured by the Dominion 'under certain conditions and restrictions,' and it is substituted that arbitrary 'conditions and restrictions' with regard to the public lands would amount, as Sir Robert Borden himself suggested in 1918, to a concession of 'the principle that the government do not intend to hand them over.'[a] Instead of the province being 'supreme' over its own public domain, 'directly under the Crown as its head,'[a] the Dominion would still be exercising in Manitoba a 'sovereignty' which if applied to other provinces of Canada would be regarded as intolerable. Instead of becoming a full province of the Dominion, Manitoba would still remain a colony; with powers, it is true, somewhat enlarged in practice but with status almost as far removed as ever from the 'first principles' of responsible government and the *British North America Act* of 1867.

For there would seem to be no more fundamental principle in connection with the whole development of local control

[a] 'The lands ought to be handed over, but if we are to concede the principle that the government do not intend to hand them over, then in that case the best thing to do was that which I suggested.' *Hansard*, 1918, p. 6007.

[a] Sir Robert Borden to Premiers Martin, Scott and Stephens, March 10, 1918, in *Hansard*, 1918, p. 6007. See note in above.

[a] and Haldane, as already noted, in the *Manitoba Initiative and Referendum Case*.

over the public domain than the fact that the primary purposes of that local control were local. It will not be necessary to repeat in detail the evidence upon this point. In 1864 the Colonial Office pointed out that 'Colonists of the Anglo-Saxon race look upon the land revenue as legitimately belonging to the community.'(a) The Canadian Privy Council itself declared the plight of Prince Edward Island in having 'no lands, the proceeds of the sale of which could, as in other British Colonies, be appropriated towards local improvements and the maintenance of Government.'(b) The subsidy of $45,000 to Prince Edward Island 'in lieu of lands' was granted because the province 'enjoys no revenue from that source for the construction and maintenance of local works.'(c) The 'grant of full rights over the lands' was everywhere made, as Keith points out, 'in return for a civil list of a community which relieves the Crown of the expenses and obligations of government must be entrusted with the natural resources of the Crown for that purpose.' These instances, taken at random from the evidence already adduced in other connections, could be multiplied if necessary from other sources. As Sir Wilfrid Laurier pointed out in 1911, 'the guiding principle' in Confederation with regard to the public domain was 'that the provinces were entitled to the public lands as a source of revenue to administer to the growing wants of the population in each Province.'(e)

These normal functions of the public domain 'for the purposes of local revenue' have remained for fifty years in Manitoba latent in the unannounced but 'undoubted rights' of the province to its 'public lands and natural resources.' In fact these have been so long latent that the rest of Canada seems almost instinctively to regard them as vested interests of the Dominion. It is a remarkable fact that while 'school lands'

(a) *Correspondence relating to the Surrender of Rupert's Land*, 1869, Appendix 01, p. 88.
(b) *Indian Sessional Papers*, 1870, Vol. 5, Paper No. 81, p. 7.
(c) *Clause 5 in the terms of union.*
(d) *Responsible Government in the Dominions*, II, 1017.
(e) Sir Wilfrid Laurier to Hon. A. L. Sifton, Aug. 7, 1911.

are supposed to yield revenues for education, and 'swamp lands' (from 1884 to 1912) 'when drained,' as the Canadian Privy Council pointed out, 'are fit for settlement and very valuable,' the most valuable lands of all which are 'immediately fit for settlement and tillage, and likely to be sought by immigrants' cannot still be alienated to free homesteads by Canada 'for the purposes of the Dominion.'

It may be said without much uncertainty that 'the potency of these observations in favor of a continuance of such a policy has passed away.' It would be out of place here to discuss the advantages or disadvantages of the homestead policy of the Dominion; though a very profound modification of opinion with regard to the whole system in both Canada and the United States would not seem to be improbable when all the facts connected with it come to be impartially appraised. It is admitted, however, that some of the richest soil in North America must be regarded as a fiscal asset of the first magnitude to the province; and if in addition to the vast areas already permanently alienated from provincial control, that which remains and which ought to be within the beneficial control of the province 'for the purpose of local revenue' is still to be administered 'for the purposes of the Dominion,' the province is entitled to adequate fiscal compensation and to statutory safeguards which will leave full provincial status absolutely unimpaired. This is a case where a return to first principles would seem to be imperative. Free lands producing no revenues, rapid immigration producing educational and social problems of the first magnitude—these from the standpoint of the province are the 'security sole' of Dominion policy which it must be 'the task of good statesmanship,' as Sir Robert Borden has observed, to forestall and alleviate.

The other feature of the Natural Resources Question which invites comment is of equal moment, though it is more difficult perhaps, to discuss it with equanimity. The reference of the

[illegible] Wilfrid Laurier to Hon. A. L. Sifton, Aug. 7, 1911.

[illegible] A. L. Sifton to Sir Wilfrid Laurier, March 20, 1911, with reference to the disparate features of the free homestead system, etc., to the Order in Council of May 30, 1908.

'Natural Resources Question' to a 'Conference of representatives of all the Provinces' in a purely provincial capacity would seem to leave the fiduciary obligations of the Dominion in administering the public domain of the Prairie Provinces to be determined by the other provinces of Canada on the basis of their own fiscal expediency. Acquiescence on the part of the Premiers of the Prairie Provinces would 'virtually establish an admission on our part that the other Provinces have a right to share in the beneficial interest in our public domain.'(1)

It is possible that much of the hostility to the historic claims of Manitoba to full 'provincial rights for provincial status' has arisen from a misconception of the nature of provincial claims and even of the basis of past and existing subsidies 'in lieu of lands.' The resolution of 1918, already quoted, would seem to be particularly unfortunate in this respect. The transfer of the natural resources hitherto unalienated 'under certain conditions and restrictions' would imply the continuation of an intolerable federal 'suzerainty' over this province. At the Conference of November, 1918, 'the representatives of the following provinces, namely: Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, and British Columbia' contended that 'in the event of the special allowances in lieu of lands' (provided by the *Alberta* and *Saskatchewan Acts* and the *Manitoba Boundaries Extension Act*) 'being maintained in whole or in part, a proportionate allowance calculated on the basis indicated in the said Acts be granted to each of the other provinces of Confederation.' A calculation 'on the basis indicated in the said Acts' is scarcely possible in the case of those provinces because the calculation of 1905 was based upon the estimated value ($37,500,000) of the public domain withdrawn from provincial control 'for the purposes of Canada.'(2) The provinces of Ontario, Quebec,

(1) Premiers Norris, Martin and Stewart to Sir Thomas White, Nov. 19, 1918.

(2) The basis of section 30 of the *Alberta and Saskatchewan Acts* was outlined as follows by Sir Wilfrid Laurier: 'As the public lands in the said provinces are to remain the property of Canada, there shall be paid by Canada to the said provinces annually by way of compensation therefor a sum based upon the estimated value of such lands, namely $37,500,000, the same being assumed

Nova Scotia, New Brunswick and British Columbia have enjoyed full beneficial control of their public domain since the granting of responsible government. As already pointed out, the original subsidy in lieu of lands in Manitoba was demanded 'in consideration of the lands within Manitoba appropriated by the Dominion for the building of the Canadian Pacific Railway,' and was granted 'as is done in Prince Edward Island.'

Similarly the compensation demanded for the 'school lands' of the West would constitute not only an implicit denial to the Prairie Provinces of their 'undoubted rights to their public lands and natural resources' but a truly ironical penalty upon the Dominion Government for qualifying that denial even in the sovereign interests of education. It must be admitted also that the reservation of 'any special claim . . . upon any other ground whatsoever for adjustment at the same time as the lands and natural resources are transferred to the provinces of Manitoba, Saskatchewan and Alberta' has a certain comprehensiveness about it which appears to be well calculated to defy any attempt at evasion.

Turning, however, from the 'Conference of the representatives of all the Provinces of Canada' in November, 1918, the issue would appear to be simplified in one important respect at least by the official views elsewhere expressed by the Premiers of the Maritime Provinces. With regard to the proposal of Premiers [illegible], Scott and Rutherford (December 22, [illegible]), transmitted to the Federal Government, Premier Fleming of

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'To be of an area of 25,000,000 acres and to be of the value of $1.50 per acre, and upon the population of the said provinces as from time to time ascertained by the quinquennial census thereof, such sum to be arrived at as follows:

'The population of the said provinces being assumed to be at present 250,000, the sum payable until such population reaches 400,000 is to be one per cent on such estimated value, or $375,000.

'Thereafter until such population reaches 800,000, the sum payable is to be one and one half per cent on such estimated value, or $562,500.

'Thereafter until such population reaches 1,200,000, the sum payable is to be two per cent on such estimated value, or $750,000.

'And thereafter such payment is to be three per cent on such estimated value, or $1,125,000.' Hansard, [illegible]

New Brunswick expressed the opinion:

> 'As to the wisdom of these three prairie provinces having handed over to them the public lands is a question between the Federal Government and the provinces interested and affected, and I do not wish to express any opinion in relation to that question.'

Similarly Premier Murray of Nova Scotia, though protesting against the retention of 'both the lands and the money' by the Prairie Provinces as 'an entire disturbance of the financial arrangement between the various provinces,' conceded the fact that the public domain of the West was not the concern of the other provinces of Canada in their provincial capacity:

> 'I recognize the fact that the question of the wisdom of giving the provinces the lands is one between the Dominion Government and the western provinces.'[6]

Now it cannot be too strongly emphasized that the 'Natural Resources Question' is not two questions but one. It is not a question of lands and a question of subsidy but a question of public lands and public lands only as from the date of the assumption of the duties and obligations of responsible government. It is submitted that there is no justification for interpreting the compensation for natural resources alienated for half a century 'by the Government of Canada for the purposes of the Dominion' as a species of cash subsidy like that 'for the support of the Government and Legislature' or the 80c per capita grant to the provinces in return for the surrender of customs revenues to the Dominion. In a very real sense the compensation for alienated resources is not a subsidy at all. It is the equity due to this province from a usurpation which took place fifty years ago. It is part and parcel of the public domain as from 1870: nothing more and assuredly nothing less. In that sense even the 'two fundamental principles' cited by the three Western Premiers in defence of their proposal of December 22, 1918, are found to be in essence but one, for the 'right to compensation for such portions of the public domain as have been alienated for the general benefit of Canada' is but a corollary to the clear-cut and convincing challenge of

[6] Speech to the Nova Scotia Assembly, Hansard, Feb. 21, 1919, p. 1000, et seq.

Sir Robert Borden in inaugurating the ascendancy of British as distinct from American principles in 1905:

> 'The people of the northwest, when they are granted 'provincial rights . . . are entitled to the control 'of these lands just as much as the people of the eastern 'provinces of Canada are entitled to the control of their 'provincial domain. I see no distinction.'(1)

In conclusion it may be submitted, with all respect, that with the opinion as expressed above by Premier Fleming of New Brunswick and Premier Murray of Nova Scotia, the Prairie Provinces will be found to be in complete agreement.

It is a remarkable coincidence that the 'Natural Resources Question' should culminate in this two hundred and fiftieth anniversary of the granting of the Hudson's Bay Charter, the hundredth anniversary of the death of Selkirk—whose work of settlement in the West may be regarded as the one vested interest which withstood American expansion westward and northward during the nineteenth century—and the fiftieth anniversary of the entrance of Manitoba into Confederation: the quarter-millennium of the thing which made this western country British, the centenary of the thing which kept it British and the jubilee of the thing that made it Canadian.

It is altogether fitting that this should be, for the settlement of the 'Natural Resources Question' is a Canadian problem altogether much more fundamental than the nice adjustment of subsidies or the liquidation of all possible provincial 'claims' against the Federal Government. It is nothing less than the consummation of Confederation itself—a process which is necessary within the Dominion before the Dominion can take its rightful place among the autonomous British nations of the Empire. The only thing that would seem to be comparable to it in this respect is the projected Union of

(1) *Hansard*, 1905, p. 2020.

the Maritime Provinces; but whereas 'Maritime Union' would be a superstructure to Confederation, a piece of constructive statesmanship inspired by a vision of the future, the 'Natural Resources Question' is a flaw in the very cornerstone of Confederation, aggravated and complicated by half a century of wrong.

It is seldom that a definite principle has been more carefully safeguarded in constitutional legislation than full provincial 'rights over the land' in the *British North America Act of 1867*. There is perhaps no more distinctive feature of that great measure, for as Lord Durham remarked more than eighty years ago, 'the function of authority most full of good or evil consequences has been the disposal of public land.' These functions were committed deliberately to the separate provinces. By the provisions of section 146 of the *British North America Act of 1867*, even the subsequent admission of British Columbia, Prince Edward Island, Newfoundland, Rupert's Land, and the North-western Territory was made 'subject to the provisions of this Act.' There is no 'function of authority' in which the province as such is more conspicuously 'supreme' and 'directly under the Crown as its head.' Indeed there is a sense in which the provincial control of the public domain served an even more fundamental purpose. It is more than the cornerstone of Confederation. It was part of the foundation, the very bed-rock upon which the whole edifice was built, for without responsible government and its first corollary, the 'grant of full rights over the land,' the provinces which entered into Confederation in 1867 would never have been in a position to aspire to a British and transcontinental Dominion.

Now while it is seldom that a great principle has been so discerningly built into the foundations of a nation, it is doubtful if a parallel can be found to the half-century of devious expediency during which this fundamental principle has remained in abeyance in the case of Manitoba. Beyond a doubt this Province has been the Cinderella of Confederation; it has been her misfortune for fifty years to sit among the ashes and aspire only to the commonplace rights and privileges of the

more fortunate provinces of the Dominion. She inherited from the Riel insurrection an unavoidable prejudice from the rest of Canada that was as meaningless as it was unfair. Within her boundaries for fifty years have been fought out the bitter controversies of Quebec and Ontario. The very 'school clause' of the Manitoba Act was devised 'according to the system of the Province of Quebec.'[1] Railway communications east and west were a by-product of the terms of union with British Columbia, and the public domain was withheld because the Canadian Pacific Railway 'must be built by means of the land through which it had to pass.'

With regard to 'land revenues' it was twelve years before any local concessions were made to alleviate the poverty in that respect which had been imposed upon the province 'for the purposes of the Dominion.' 'Land revenues' elsewhere were the normal function of the public domain in rapidly developing communities. With millions of acres of the richest soil in North America within her boundaries, this province was starved in the midst of plenty. Even in 1882 the grant of $10,000 'in lieu of lands' was made 'as is done in Prince Edward Island.' The sum of $100,000 to which the subsidy in lieu of lands was increased in 1886 had been suggested by the case of British Columbia for the 'railway belt' through the Rocky Mountains transferred 'in trust' to the Dominion.

In default of convenient British precedents with regard to the land, the public domain of Manitoba was administered in accordance with American, or the perversion of American precedents which had been superseded seventy-five years ago in the British Empire by the practice of responsible government. The Dominion has done to Manitoba what the Government of the United States has never done to the smallest 'land State' of the Union, and the Government of the United States has done to all the 'land States' of the Union what George III never contemplated for Massachusetts.

[1] Indeed, of the 'seven' list of rights upon which the discussions upon the Manitoba Bill were based. Archbishop Taché's Letter to the Winnipeg Free Press, Dec. 27, 1884.

Had the Dominion instead of the Province of Ontario maintained the services of Sir Oliver Mowat, the boundaries of Manitoba would almost undoubtedly have included a fifteen or twenty miles in the Ontario boundaries dispute of the eighties. When the boundaries of the province were extended in 1912, the northern boundary was determined by the case of Alberta and Saskatchewan in 1913. Even in 1912 the boundaries of Ontario and Quebec had to be so generously extended also that the Maritime Provinces have lodged claims for compensation for which it is proposed to secure equal parity with the half-century of 'provincial rights over the land' in Manitoba. It must be admitted that in the 'railway strip' to Port Nelson which was granted also to Ontario through Manitoban territory in 1912, there is a refinement of this traditional policy for which it would be difficult to find a parallel. 'Chartered territory' which could not be entrusted to the beneficial control of Manitoba because it had been 'purchased' by the Dominion from the Hudson's Bay Company, is granted to Ontario not as 'unpatented or waste lands' under beneficial control within its own boundaries but as property in full seigniorial ownership within the boundaries of Manitoba. At the same time the old subsidy to this province (in consideration of the lands within Manitoba appropriated by the Dominion for railway purposes) and the 'swamp lands' the use mainly of assistance of 'provincial rights over the land' ever enjoyed by this province were surrendered in order to 'place Manitoba on a basis of equality with Saskatchewan and Alberta.'[1]

It is submitted that the time has come to right this half-century of vested wrong by an Imperial amendment to the British North America Act which shall leave this province like the other provinces of the Dominion 'supreme' over its own lands 'directly under the Crown as its head.' Instead of aspiring to the commonplace rights and privileges of mere fortunate states and provinces 'as is done in Prince Edward Island,' 'according to the system of the province of Quebec,'

[1] Governor Haultain to Premier Borden, Jan. 6, 1913

as was done in British Columbia, as was said to obtain in the United States of the American Union, it would not be unlike to consider the 'Natural Resources Question' upon the merits of the case of this province. Let it be repeated that this can be done only by a resolute adherence to 'first principles.' The sound constitutionalism which has guided so judiciously the relationships of the Dominion within the Empire is confronted within the Dominion itself with a problem which will require for its solution the most signal contribution to the constitutional structure of Confederation since the original conditions under the British North America Act of 1867 'subject to the provisions of this Act' were abrogated by the Manitoba Act almost exactly fifty years ago. 'The Natural Resources Question' may thus be said, without false modesty, to constitute one of the most important problems of the Dominion. Its settlement would see the seal of full provincial status under the British North America Act of 1867 upon three Canadian 'colonies,' and would enable the Dominion, with its hands in order, to move forward dispassionately among the British nations of the Empire and the other nations of the world.

SUMMARY

1. Sound constitutionalism of Ottawa is the necessary complement of the 'full but provincial rights' (Premier Narquay) in Manitoba. It is fitting and necessary that relationships within the Empire and abroad, and the anomalies of Confederation at home, should be settled at the same time and by the same methods.

2. The constitutionality of British principles becomes definitely traceable since the Alberta and Saskatchewan Acts. Attitudes against provincial control of the public domain 'would have justified the retention by the Imperial government up to the present time of every acre of Crown Lands in Canada.' 'The people of the northwest when they are granted provincial rights ... are entitled to the control of these lands.' (Sir Robert Borden.)

3. 'The application of the public lands to the Provinces of Alberta and Saskatchewan upon fair terms' was advocated in 1907. 'The final recognition' for the Prairie Provinces 'of their

undivided rights to their public lands and natural resources' in 1913; though by February, 1914, serious and complicated difficulties . . . have now to be surmounted.'

4. On December 22, 1918, the three western Premiers had submitted their proposal:

> 'that the financial terms already arranged between the provinces and the Dominion as compensation for lands should stand as compensation for lands already alienated for the general benefit of Canada';

and subsequently urged in its defence 'two fundamental principles' already conceded, (a) the right of the provinces to the public domain, (b) 'their right to compensation for such portions of the same as have been alienated for the general benefit of Canada.' (Premiers Scott, Sifton and Martin.)

5. The 'Resources Question' was then overshadowed by the war until the Conference of November, 1918, which it was submitted to 'representatives of all the provinces of Canada' in their provincial capacity, with the intimation that 'the Government was disposed to give favourable consideration . . . provided that it was mutually satisfactory to the other Provinces of the Dominion.'

6. A resolution of 'the other Provinces of the Dominion' demanded:

> 'that in the event of the special allowances in lieu of lands . . . being maintained in whole or in part, 'a proportionate allowance . . . be granted to each 'of the other provinces of Confederation reserving however 'any special claim . . . upon any other ground 'whatsoever.'

7. Pending a return to normal federal channels the 'Natural Resources Question' would seem to have been consigned to the limbo of inter-provincial controversy whence efforts of unofficial citizens seek in vain for deliverance.

8. Two fragmentary features of the 'Resources Question' challenge attention, (a) the suggestions of 'certain reservations' in connection with the return of the public domain to the Prairie Provinces, and (b) the intervention of other provinces in a purely provincial capacity in the 'Resources Question' of the West.

9. With regard to the former, any arbitrary 'conditions and restrictions' with regard to lands would amount to a concession of 'the principle that the government do not intend

to hand them over.' Instead of the provinces being 'arranged over the new public domain' already under the Crown in the land, the Dominion would still be exercising an independent authority.

10. 'The primary functions of the public domain are general. Colonists of the Hudson's Bay lands upon the land revenue as legitimately belonging to the Imperial Colonial Office.' 'We had no doubt the proceeds of the sale of which would, as in other British Colonies, be appropriated towards local improvements and the maintenance of government.' (Sir Peter Campbell.) 'The guiding principle of Confederation with regard to the public domain was that the provinces were entitled to the public lands as a source of revenue to administer to the growing needs of the population in each Province.' (Sir Wilfrid Laurier.)

11. 'These normal functions of public lands (exemplified even in the provinces in school lands, swamp lands, etc.) were denied to Manitoba with regard to millions of acres of some of the richest lands in North America. The Prairie Provinces are entitled to adequate compensation if the old system is to be continued, and to statutory guarantees in any case ensuring full provincial status without any qualification whatever.'

12. 'The reference of the "Resources Question" to the representatives of all the provinces is more difficult to discuss with equanimity because it would seem to leave the fiduciary obligations of the Dominion in administering the public domain of the Prairie Provinces to be determined by the other provinces of Canada on the basis of local expediency; and acquiescence would virtually establish an admission on our part that the other Provinces have a right to share in the beneficial interest in our public domain.' (Premiers Harris, Martin and Stewart.)

13. 'The "Natural Resources Question" is not two questions but one. It is not a question of lands and a question of subsidy, but a question of lands as from 1871. The "Resources Question" is one question and the Federal Government alone must be its Trustee. Compensation for alienated lands is thus the equity due by the provinces in respect of lands as from the inauguration of responsible government.'

14. 'The wisdom of these three Prairie Provinces having handed over to them the public lands is a question between the Federal Government and the provinces interested and affected.' (Premier Flemming of New Brunswick.) 'The question of the

wisdom of giving the provinces the lands in dispute between the Central Government and the western provinces. (Premier Sharma of Tibet Realm.)

16. This is a problem not of adjusting equalities of bundles of provincial claims, but of reconciling Constitutional principles of public lands with the precedents, the foundation of the R.N.A. Act of 1947, and the true guardians of responsible government. In this respect Kashmir has been the Cinderella of Constitutional, regrettably unfortunate in lands that were never taken for granted, as is done in U.P., as was done in H.C., as was said in addition to the Tribal Claims of the American Union. It would not be unfair to settle the Federal Resources Commission upon the merits of the case of this province.

17. The time has come to right this half-century of wrong, and by Imperial statute to confer this province like the other provinces of the Dominion, wherein lies the own lands directly under the Crown as its head.

APPENDIX.

GENERAL SUMMARY.

I. INTRODUCTION: THE NATURE AND SCOPE OF THE INQUIRY.

1. A very representative convention at Fort Garry (February, 1870) claimed among the terms of proposed union with Canada 'full control of all the public land' for the 'Local Legislature.' Similar claims were advanced on at least three other occasions by less representative sections of the community during the process of transfer of Rupert's Land to Canada. The provincial control of the public domain has been advocated almost continuously for fifty years.

2. The principles underlying this claim, however, are much older than the Province of Manitoba or the Dominion of Canada. The public domain has always been, and still remains, in title 'vested in the Crown' which is 'one and indivisible throughout the Empire' (*Lord Haldane in P.C.*); but two functions with regard to it, viz. (*a*) the administration of the same, and (*b*) the beneficial interest therein, were long in dispute until both were unreservedly conceded to self-governing provinces upon their undertaking the duties and obligations of 'responsible government.'

3. The claims of Manitoba are in exact conformity with this double principle as applied to the period of her status as a Canadian province since 1870, viz. (*a*) the unrestricted control of natural resources hitherto unalienated, and (*b*) ample recognition of full beneficial interest not only in those but in those already alienated by 'the Government of Canada for the purposes of the Dominion.'

4. The issue, therefore, is as fundamental as was the control of crown lands, the 'clergy reserves,' etc., in Upper Canada over eighty years ago. In fact it is largely the same issue: whether Manitoba is a 'colony' or a province of the Dominion.

5. The principles then established have been applied everywhere to self-governing provinces under 'responsible government': to the Maritime Provinces and to 'Canada' long before Confederation; to Newfoundland and New Zealand

and the provinces of the Australian Commonwealth) to all the original provinces of the Canadian Confederation as safeguarded by the *B. N. A. Act*, 1867, section 109; to British Columbia and Prince Edward Island which have since entered Confederation; to all the self-governing provinces and Dominions of the Empire, in fact, but the Prairie Provinces of Canada.

6. The present inquiry, therefore, may be simplified by outlining at the outset the range of historical evidence to be examined in the following sections:

(II.) *British Principles with Regard to the Public Domain, as established in Canada as 'responsible government.'*

(III.) The conditions determining *The Surrender of Chartered Rights in Rupert's Land and the Transfer to Canada in 1870.*

(IV.) The circumstances of *The 'Transfer' and Provincial Status for Manitoba in 1870.*

(V.) An examination of *British Principles and Canadian Practice in British Columbia in 1871.*

(VI.) A similar examination of *British Principles and Canadian Practice in Prince Edward Island in 1873.*

(VII.) An outline in humiliating contrast with British practices elsewhere of *Federal Policy and Provincial Poverty in Manitoba after 1870.*

(VIII.) A discussion of the 'subsidy in lieu of lands' in 1882 and the federal renewal of *American Precedents for a British Province.*

(IX.) An outline of the return to sound British constitutional principles and their application to the present 'Natural Resources Question' *British Principles in the Ascendant: Province or Colony?*

II. BRITISH PRINCIPLES WITH REGARD TO THE PUBLIC DOMAIN.

1. The claim to (a) the administration of the public domain, (b) the beneficial interest therein, formed an integral part of the conflict for 'responsible government' in Canada.

2. Both these functions were definitely conceded more than seventy-five years ago to provinces under 'responsible govern-

ment,' Imperial beneficial control being definitely renounced by statute (15 & 16 Vic., c. 40 and 17 & 18 Vic., c. 118). Both functions, therefore, were implicit in provincial status for all the original provinces of Canada.

3. When these provinces united to form Confederation these rights were confirmed in *B.N.A. Act*, 1867, s. 109.

4. Similarly in Newfoundland, New Zealand, the provinces of the Australian Commonwealth, the same principles are uniformly in operation. 'Colonists of the Anglo-Saxon race look upon the land revenue as legitimately belonging to the community.' (*Colonial Office*, 1864, *re* Rupert's Land).

5. 'The plan adopted in every case of the grant of responsible government . . . took the form of a grant of full rights over the lands in exchange for a civil list' (*Keith*), viz., a compact involving the grant of the beneficial control of the public domain in return for undertaking the obligations of self-government. Manitoba has discharged the duties of 'responsible government' with full 'civil list' since 1870 and has been denied for fifty years 'full rights over the lands in exchange.'

6. Even Lord Durham's proposals with regard to Imperial control of crown lands for purposes of scientifically directed colonization were still-born in Canada, and the only alternative was that 'the whole control of the property should be vested in the most ample and unconditional manner in the Colonial Legislature. This is required by every principle of justice.' (*Buller*).

7. The constitutional rights which the original provinces of Confederation now seek to deny to the Prairie Provinces in the twentieth century are the same rights which they themselves vindicated, even against Lord Durham, during the first half of the nineteenth. The arguments employed against the provincial rights of the Prairie Provinces would have justified the retention by the Imperial government up to the present time of every acre of Crown Lands in Canada. (*Sir Robert Borden* in 1905).

8. In respect of public lands, Manitoba is still a 'colony' of the Dominion, with this difference for the worse, that whereas the crown lands before 'responsible government' were administered by residents of the province 'for purely colonial purposes' and 'for local or personal objects' (*Buller*) those of Manitoba are administered, by Dominion statute, by the Government of Canada for the purposes of the Dominion.'

[illegible]

The reluctance of other provinces to concede to Manitoba the claim in respect of public domain which they themselves have always enjoyed had long been defended upon the claim that Rupert's Land was purchased from the Hudson's Bay Company and became therefore the property of Canada.

(A) The Purchase of the Territory

1. The H.B.C. [illegible] to surrender [illegible] Rupert's Land [illegible] the Company [illegible] control of the land.

2. [illegible]

3. The H.B.C. [illegible] for the payment [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

coming directly to Canada from the Crown, by cession under *B.N.A. Act*, 1867, section 146, and without even the fictitious appearances of preliminary 'purchase'. This is clear from the correspondence of the Colonial Office at the time of the *Rupert's Land Act*, the attitude of the Canadian Government, etc.

6. Mainland district of British Columbia already created (1858) out of 'licensed' territory in same relationship to H.B.C. as 'North-Western Territory', yet full beneficial control of public domain was vested in B.C. in 1871.

6. Similarly, districts from the 'chartered' territory of Rupert's Land were added both to Ontario and to Quebec, with full beneficial control vested in these provinces, despite so-called 'purchase' by Canada in 1870. Even within boundaries of Manitoba, Ontario was granted property rights over 'railway strip' to Port Nelson at the *Manitoba Boundaries Extension Act* of 1912.

7. Manitoba, Saskatchewan and Alberta appear to be the only provinces of Canada which cannot be entrusted with beneficial control over either the 'licensed' or 'chartered' territory of the H.B.C. ceded to Canada in 1870.

8. By the constitutional procedure scrupulously followed in the transfer, therefore, both Rupert's Land and the North-Western Territory came to Canada not from the H.B.C. by 'purchase' but from the Crown by 'Acts of State, authorized by Imperial Statute' with 'all the force and permanence of fundamental law'.

9. In 1871, British Columbia (see Chapter V) received full beneficial control over public domain, both 'licensed' area ceded in 1858 and Vancouver Island which has been repurchased from the H.B.C. in 1867 for £57,500. It is submitted that Manitoba is entitled to the same fundamental rights as from 1870, 'as a part of the British system'.

D. THE 'TRANSFER' AS A PROVINCIAL STATUS FOR MANITOBA

1. The *Manitoba Act* provided that upon transfer to Canada by Imperial Order in Council, Manitoba should be 'one of the Provinces of the Dominion of Canada'. In the case of this province, therefore, there has been no preliminary period of territorial status, and British principles thus apply with peculiar urgency and directness to the whole Canadian period of our history since 1870.

2. The aftermath of the Riel Insurrection and the

motives under which provincial status was sought and secured in the *Manitoba Act* long inspired an unenviable and rather undiscriminating prejudice against this province.

3. With regard particularly to the beneficial control of the public domain, the conduct of Riel in 1870 has penalized the rest of the province for fifty years. 'They wished to have all the lands . . . as in other Provinces . . . The land could not be handed over to them . . . A large Province . . . might interfere with the general policy of the Government . . . The land legislation of the Province might be obstructive to immigration.' (*Sir John A. Macdonald in debate on Manitoba Bill*)

4. The *Manitoba Act* was based on a secret 'list of rights' which remained generally unknown to the inhabitants of Manitoba for nineteen years. Both the British and Canadian authorities refused to regard the *Manitoba Act* as 'subject to confirmation by the "Provisional Government" which would have involved a recognition of Riel and his associates.' (*Sir Clinton Murdock*) Manitoba was unique, therefore, among the provinces of Canada in that many of the terms of union . . . and particularly those relating to the public domain . . . were imposed upon the inhabitants of this province not only without their consent but even without their knowledge.

5. Section 30 providing for the administration of 'All ungranted or waste lands . . . by the Government of Canada for the purposes of the Dominion' was unique even among the provisions of the *Manitoba Act*. 'To condone for this colonial' (of the 'control of all the lands of the North-west') the Dominion Government 'gave to the children of the half breed inhabitants . . . one million four hundred thousand acres of land, which had not been asked for.' (*Archbishop Taché*) With this removal of opposition to federal control of provincial lands, no precautions were taken to safeguard for the future the territorial rights of Manitoba as a British and Canadian province.

6. It is noteworthy that the provisions in the *Manitoba Act* relating to the public domain contained every expression of opinion, both English speaking and French, in every list of rights drawn up during the process of transfer. 'Full control of all the public land' for the 'local Legislature' had been stipulated by the Convention of February, 1870, even upon the basis of territorial status.

7. Whatever the requirements of the hour may have been, therefore, with regard to the temporary control of the public domain of the Province in 1870, the indefensible

phrase 'for the purposes of the Dominion' in the Manitoba Act must be regarded as an unwarranted and deliberate violation of fiduciary obligations on the part of the Dominion. The repetition of this phrase in the Saskatchewan Act, the Alberta Act, and even in this in the Manitoba-Boundaries Extension Act would seem to indicate to the hardest and most unsympathetic minds the definite colonial subordination of the Prairie Provinces.

[illegible] Vancouver Island and British Columbia

Vancouver Island was granted by the Hudson's Bay Company, by Letters Patent in August 14 1849 and was [illegible] by the Imperial Government on April 24 1867 for £[illegible]

The Imperial control of Vancouver Island therefore and appropriated to the British Government as the public domain of Manitoba was appropriated [illegible] without [illegible] in that case to Canada for the purposes of the Dominion.

[illegible] to indemnify the British Government for the [illegible] administering the land for the [illegible] Great Britain, while Canada is claiming control of the public lands.

[illegible] consequence of the disagreement [illegible] The matter would be decided by that [illegible] against the people of the Prairie Provinces [illegible] and [illegible] that would be [illegible] only by [illegible] the control of the land of the country and [illegible] and [illegible] to the [illegible] Parliament.

The conduct [illegible] in British Columbia was [illegible] that Alberta which had hitherto been [illegible] of the Dominion by [illegible] corresponding to the [illegible] of the Prairie Provinces.

The two British Columbia [illegible] were united in 1866 under the name of British Columbia [illegible] Island and the Mainland Western Territory by having been granted and [illegible] of the Hudson's Bay Company.

It is not [illegible] of the terms of union that [illegible] was not made for the introduction of responsible

government was denied by the inhabitants of British Columbia. In the Address pursuant to B N A Act 1867, section 146, had to be passed by legislative council which was then for the first time predominantly elective (since had of African members)

7 British Columbia thus acquired control of public domain and mineral interest therein before being granted responsible or even fully representative government British annual subventions of respectively provincial fully vested and has been denied ever since both functions with regard to the public domain

8 Upon entering Confederation B C received almost automatically the beneficial control of public domain The lands then unalienated are discussed but specifically enumerated in the address of union and British principles thus prevailed with the first precedent for the alienation of a valuable asset

9 Upon the railway belt for the transcontinental railway granted by B C as the price of union was transferred to Canada in trust at an annual payment of $100,000 This subsidy therefore must be considered as the interest on the equal total value in the provinces of lands thus alienated in trust by Canada for the purposes of the Dominion

10 Within this category it is admitted must be included the subsidy in lieu of lands not granted to Manitoba in 1885 during the prairies in the C P R The lands alienated by Canada in Alberta since 1905 have been administered by Alberta (R S A 1922 c 3 s 3) for the purposes of the Dominion and ought to be accounted for by the railway lands of British Columbia upon a similar substitute basis

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VI INTERNAL REVENUE CLAIMS PRIOR TO 1871 TO PROVINCES ENTERED IN

1 In Ontario v Canada and Quebec v Canada (1921 A C 401) British practice was followed in granting the public domain but subsidies were adjusted to actually provided needs, a feature being consideration and bringing the period of responsible government

2 The Imperial Act 1867 did not deal with the question of the Dominion Supreme Court of Canada (1921 S C R 1) in the Ontario case held that the Dominion had no

[illegible] who did not themselves constitute the community.

In an imperial colony there is no effectual mode of taxation for purposes of government and improvement.

In Prince Edward Island [illegible] the result has not been such as to invite imitation.

It is clear that colonists of the Anglo-Saxon race look upon the land as peculiarly belonging to the community.

The land question, therefore, like the railway question in [illegible] was the chief bone in disputing terms of union and there are two distinct phases of the problem.

(a) The best [illegible] lands and conveyed back to a local Govt. [illegible] British provinces for purposes of government and improvement.

(b) The subject of proprietary tenures.

The best proposals from the Canadian Privy Council [illegible] with regard to these two phases of the land question were:

(a) A grant of [illegible] as a compensation for the loss of public lands, [illegible] of the lands thus granted to the Crown, the proceeds of the sale of which would go to the other British colonies for the benefit of their local Governments and the maintenance of Government.

(b) [illegible] would use their influence to [illegible] to enable the Crown to pay the tenants the sum now held in trust [illegible].

These terms were not accepted by the Island [illegible] [illegible] to establish this colony in a position of [illegible] and [illegible] and [illegible] similar to that enjoyed by the adjoining Provinces. The [illegible] terms were formulated in a number of [illegible] [illegible] [illegible].

(a) [illegible] the local Government [illegible]

(b) A full and [illegible] settlement of the land [illegible]

[illegible] the terms of [illegible] and the [illegible] to the following [illegible]

(a) indemnity of $10,000 per annum (still paid) since the Island Government had lost their Crown lands and consequently derives no revenue from that source for the construction and maintenance of local works;

(b) a loan from the Dominion not to exceed $100,000 at 4 per cent per annum for the purchase of lands now held by large proprietors.

7. It is seen, therefore, that the Dominion, to whom the beneficial control of the alienated lands of the Island had not belonged, and to whom, therefore, no purchase money or rents of land have been paid (*ibid.*) consented merely to pay P.E.I. an annual subsidy in lieu of the lands thus retained by the Crown and in default of revenue from that source for local works. This subsidy represents a capital sum of $[illegible], [illegible] in excess of that subsidy allowed by Canada (see I (a) above) and declared by P.E.I. as not authentically [illegible].

8. With regard to the other phase of the question, the settlement of the land tenure, the sum advanced by the Dominion enabled the Island to consummate the proprietary tenures under the terms of the *Land Purchase Act* of 1875 and its amendments. These consummated lands became automatically revenue producing public domain, yielding during the twenty-one year period 1876-1896 about [illegible] which does not include the most productive crop ever, that the total capital sum advanced by the Dominion.

9. The transaction therefore implies the relinquishment of beneficial interest of the province to lands alienated from without by increasing other than rents of the community, the other retains the right in the beneficial control of the public domain still available. Both provisions are seen to be in conformity with sound literal principles already outlined as inherent in provincial status and the maintenance of responsible government.

10. In Manitoba the only crown lands in provincial control were those in the Dominion Government in 1871 when they had been made by the Crown in Canada, and, long before the period of responsible government, in Manitoba alienations have been made by the Crown and provincial status in the Government of Canada for the purposes of the Dominion. From the subsidy of Manitoba in lieu of lands not granted (as is done in P.E.I.) etc. in lieu of lands thus granted by the Dominion only lands [illegible]

[illegible] the [illegible] [illegible] and after the [illegible] [illegible] [illegible]

without accountability to the people. The land could not be handed over to them. The Pacific Railway came to fault by reason of the inside dishonesty which it had to pay. They would be in a position to obtain repayment of the disbursement of the Government. (Sir John A. Macdonald). The public domain in the West had been given for nothing. (Sir George Cartier). The whole of Manitoba was acquired by the Dominion for purposes and there became the property of the Dominion. (Sir Peter Carnegie). The expenditure in connection with the C.P.R. and the public buildings may be regarded as an advance to be repaid from the lands. (Sir Peter Carnegie).

6. The attitude of patronage of corporations of property, capital and personnel was reflected even in the statutory legislation of the administration of the Dominion Lands. The Manitoba Act was largely also one of Federal Parliament of more than equitable capital. (Sir John Macdonald). The public lands could be alienated to private hands only temporarily by the Dominion and state until held to be subject to B.N.A. Act, 1871.

7. The statute making Regulations for Federal Purposes prevailed. The two papers, Manitoba, by the purchase of the Dominion and for all purposes therefore, are bound by the decisions of the Minister concerned of the Dominion in the with Manitoba as a part of the British Empire. The two papers were treated without the consent of the Dominion, directly concerned but in contravention of very essential provisions of their rights upon the subject, the public was alienated at Ottawa as a public land, were been by the Federal Government. They form the statutory basis upon which rest the rights of Manitoba to a high educational land of their own practical control.

8. The second also left in Manitoba to administer by political agent. The powers are interpreted in a liberal way by action of the public debate which he has taken place. In order to carry out the C.P.R. and performance Dominion the Dominion Lands of the province of all rights of the Federal Parliament at the same time as it applied indirectly to the administration of the public lands. These shall Manitoba form the land of the public continuation in Canada of federal statutory powers. Bill 18 has among the 1871 (1901) as amended in 1911 in 1912. Drafts in Federal legislation a total alienation to the Legislature and public shall of an and the lands. The powers are limited with about provisions. The grant of 1871 was made on

condition that government be 'simplified and cheapened by the abolition of the second Chamber.'

9. Subsidy of $100,000 per annum 'in lieu of lands' was demanded in 1881 'in consideration of the lands within Manitoba appropriated by the Dominion for the building of the Canadian Pacific Railway'; pending a decision the Dominion advanced $60,000 at 6 per cent. on debit account to meet 'the immediate necessities of the Province.'

10. Subsidy of $15,000 was granted in 1882 'as is done to P.E.I.' and 'intended to close any negotiations on that subject for the next ten years.'

11. Increased subsidy of $100,000 in 1885 was made contingent upon 'loyalty clause' which has left a sense of humiliation deeper even than 'disallowance' and 'the monopoly clause' of the C.P.R. upon the political traditions of the province.

VIII. AMERICA'S PREFERENCE FOR A BRITISH PROVINCE.

1. Two considerations were chiefly responsible for the agitation for 'provincial rights over the land', viz., the inbreaks financial burdens for 'local works' on account of the free homestead and immigration policy of the Dominion, and the practice of lavish grants for railways.

2. Claims of Manitoba (*Memorandum*, Feb. 19, 1881) were advanced (a) that a subsidy of $100,000 (the same as in B.C.) be granted 'in consideration of the lands within Manitoba appropriated by the Dominion for the building of the Canadian Pacific Railway', (b) that 'the residue of unsurveyed land shall be handed over to the Province for the purpose of local revenue.'

3. The case of P.E.I. ($15,000) was substituted by the Dominion for that of B.C. ($100,000), and the grant was eventually made (1886) 'as is done in P.E.I.' (*Report of Committee of Can. P.C.*) It may be contended, therefore, that both the original claim 'in consideration of the lands within Manitoba appropriated for the building of the Canadian Pacific Railway' and the grant substituted for it 'as is done to P.E.I.', are based not upon future control of 'unsurveyed or waste lands in the Province' but upon lands already permanently alienated without regard to the benefit and interest of the community. Cf. the proposals of Dec. 23, 1884, that the financial terms already arranged as compensation for lands should stand as compensation for lands already alienated for the general benefit of Canada.'

4. 'Swamp lands' were transferred to the province in 1884, but the subsidy of $100,000 in lieu of lands in 1885 was made contingent upon the 'finality clause'. This completed the discomfiture of the province in the attempt to secure 'payment for the lands already disposed of . . . within the Province' and the 'control, management and sale of the Public Lands within its limits, for the public uses thereof.'

5. The 'subsidy in lieu of lands' was interpreted even by Sir Wilfrid Laurier as proof that the 'guiding principle' of Confederation in respect of lands was 'not absolutely departed from in the case of Manitoba.' The principles at the root of the whole matter, however, were not conceded, and the Dominion met the demand 'that the residue of ungranted land shall be handed over to the Province for the purposes of local revenue' by one of the most astonishing avowals in Canadian constitutional history.

6. "The whole of Manitoba was acquired . . . by purchase . . . and thus became the property of the Dominion, and stands really . . . in the same position as lands in the Territories of the United States, which are not given to new States . . . but remain the property of the United States" (*Report of Committee on P.C.*, approved March 7, 1882)

7. "The Government . . . purchased at a large price 'in cash, all the rights . . . in and to the territory out 'of which the Province of Manitoba has been formed; it 'incurred, further, a very large expenditure to obtain and 'hold this territory in peaceable possession, and . . . in 'extinguishing Indian titles and maintaining the Indians, so 'that the Dominion Government has a very large pecuniary 'interest in the soil . . .

'The expenditure in construction (C.P.R.) and in cash 'subsidy, may be regarded as an advance, to be repaid from 'the lands . . .

'It ("the Federal Government of the United States") 'rigidly retains the public lands of the State except those it 'may appropriate for specific purposes, allotting to the 'State only swamp lands . . .

'It is expedient to recommend to Parliament a modification 'of this arrangement . . . (*Report of Committee of P.C.*, approved May 30, 1884)

8. This avowal of American precedent was defended by federal administrations both Conservative and Liberal until

1911, though even under the American system the evidence would seem to support the claims of Manitoba.

9. A fundamental difference exists between the British and American systems. In the British Empire title to all public domain is 'vested in the Crown'; and whatever may be the difference of opinion with regard to purely statutory or legal rights of the Dominion, the constitutional or political rights of the Province in the beneficial interest in the public domain and ultimate control thereof would seem to be unimpeachable. Statutory powers of the Dominion, therefore (altogether apart from the way these were acquired), must be regarded as fiduciary in character and intermediary, under responsible government, between the Crown and self-governing provinces where full beneficial control must ultimately be vested.

10. In the United States, each separate state became, at independence, the 'successor to the Crown and colony in the ownership of the unappropriated and vacant lands' in a way which has no parallel in the British Empire.

11. The nucleus of the national 'public domain' of the United States originated in cessions to the National Government with full sovereign title, of over 400,000 square miles of hinterland by seven of the thirteen states. It is not on record that the other provinces of Canada have ceded territory to form 'Dominion Lands.'

12. The States Ohio, Vermont, Tennessee, West Virginia, Kentucky, etc., organized without previous territorial status out of this ceded 'public domain' received full sovereign title and ownership of the lands within their boundaries. Manitoba came into Confederation as a province without previous territorial status, and her territory had been 'ceded' by the Crown, by 'Acts of State, authorized by Imperial Statute', with 'all the force and permanence of fundamental law', long after the principles of responsible government with all its modifications had been everywhere conceded.

13. Even Texas, admitted in 1845, received as a state without previous territorial status, the full title to public lands; and though the districts from the 'Louisiana purchase,' etc., were organized after varying periods of territorial status into 'Land States', with the public domain still vested in the National Government, measures like the *State Selection Act*, the *Distribution Act*, the 'Canal Wagon and Railroad Grants' to various states, the 'Two, Three and Five per cent. Funds', etc., are not in evidence under the American system as

applied by the Dominion to Manitoba. The U.S. Government was represented (*Committee of P.C.*, May 30, 1884) as 'allotting to the State only swamp lands.' Even these were taken away from Manitoba in 1919.

14. Unreserved avowals of American principles were made as late as 1905, at the *Alberta and Saskatchewan Bills*. This is a case in which we can go to the United States for precedents . . . Whenever a new state has been created in the American Union, the Federal Government has always retained the ownership and management of the public lands.' (*Sir Wilfrid Laurier*).

15. Basis of subsidy in 1905 and 1919 was more or less arbitrary, but the proposal of December 22, 1918 (present subsidy as 'compensation for lands already alienated') was occasioned by the necessity of reaching a common basis for the perplexing differences of status and development between the three provinces concerned.

16. Manitoba's original 'subsidy in lieu of lands' was the consideration of lands within Manitoba appropriated by the Dominion for the building of the Canadian Pacific Railway; and even the present subsidy is altogether inadequate for resources alienated for fifty years 'for the purposes of the Dominion.' Railway and H.B. Co. land sales alone (Dec. 31, 1917) amounted to $178,000,000, and there are 14,500,000 acres left.

17. Claims of Manitoba may thus be stated in less general terms as:

(a) Unrestricted homestead control of all public lands and natural resources hitherto unalienated.

(b) Compensation at a fixed equitable rate per acre for all lands within Manitoba alienated to the H.B.C. at the transfer, and under section 80 of the *Manitoba Act* by the Government of Canada for the purposes of the Dominion; such compensation to be made by way of annual payments at 5 per cent., and to be reckoned as from the date of alienation, less the amounts received as subsidies in lieu of lands.

18. The balancing of Dominion receipts and expenditures from Dominion lands is obviously a futile method of determining equitable 'compensation.' Chief alienations have been free grants, 'the purposes of the Dominion' being attained indirectly in other ways. Cf. railway land grants and free homesteads, and the high per capita customs revenues from new settlers.